

READINGS IN  
*British Government*

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*Edited by*

ELISABETH WALLACE

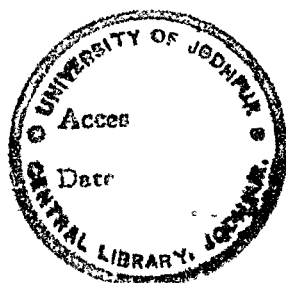
*Lecturer, Department of Political Economy  
University of Toronto*

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## Preface

THIS volume contains material from studies currently out of print, periodical articles which are not readily available to large numbers of students, and two or three selections from Hansard. It has been prepared in an endeavour to meet the difficulties of providing students of the subject with adequate source material on the government of Great Britain. Owing to the shortage of paper in England and elsewhere, a number of the most valuable studies on various aspects of the British constitution are still out of print. Many universities have found during the past two years that the influx of ex-service students has almost doubled their enrolment, while too frequently university libraries have only one or two copies of books for which several hundred readers are clamouring.

It is not suggested that such a volume as this should do more than supplement the comprehensive full-length studies of the subject which are available. It is, however, the hope of the editor that a useful purpose may be served by making readily accessible valuable material on British government which it is now difficult or impossible to obtain.

The selections taken from monographs (as opposed to periodical articles and passages from Hansard), have all been chosen from books which are out of print, on the principle that where the original study was conveniently available it might more profitably be consulted. In such cases it would seem that mutilation of the author's full-length presentation was to be avoided. Even within the range of material which is out of print, that which deals with the government of Great Britain covers so wide a field that selection has not been easy. Omissions necessitated by limitations of space are regretted, but the passages chosen speak for themselves. The lack of sections on the constitution and its conventions and on the Privy Council is intentional. Comprehensive discussions of these subjects are readily available in studies which are not out of print. To mention the most obvious examples, Bagehot's *English Constitution*, Dicey's *Law of the Constitution*, and Jennings's *The Law and the Constitution* are all in print and accessible. The development of the Privy Council is competently discussed in studies such as A. Berriedale Keith's *Constitution of England from Queen Victoria to George VI*, and in D. L. Keir's *Con-*



*stitutional History of Modern Britain*. Under these circumstances there seemed nothing to be gained from reprinting excerpts dealing with these topics, at the expense of allowing less space for material which could not be easily obtained.

No selections dealing with developments in the machinery of government inaugurated since the Labour Government took office in 1945 have been included. This omission is also intentional. Great Britain at the present time is undergoing changes which may without exaggeration be characterized as partaking of the nature of a social revolution. Contemporary attempts to assess their significance must of necessity lack perspective. It has therefore seemed wise to exclude accounts of developments which have taken place during the past two years.

This volume will have succeeded in its purpose if it encourages the student to browse freely among the periodicals represented, and to acquaint himself with the daily parliamentary scene as set forth in the complete Hansard. It is hoped that he may also acquire a taste for further investigation of these and other studies by the authors whose quality he has come to appreciate through selections which admittedly do less than justice to the ungarbled original.

Publication of this volume has been made possible by the kind permission to reprint copyright material which has been granted by the publishers and authors to whom acknowledgements have been made in the text.

My thanks are due to Professor Alexander Brady of the Department of Political Economy in this university, for his kindness in reading the introduction in manuscript and for his advice concerning the material to be included in the volume. I should also like to express my appreciation to the editorial staff of the University of Toronto Press for their interest and assistance in connection with the technical details of publication.

ELISABETH WALLACE

The University of Toronto  
December, 1947

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# Introduction

THIS volume is designed to illustrate the structure of British government and the way in which it works at the present time. Since political institutions are best understood in the light of the circumstances and theories from which they spring, the interest of the study of government lies essentially in the political ideas which it embodies and in the influence of political institutions upon the thought and welfare of the people whom they exist to serve. Throughout the ages political philosophers have wrestled with the problem of the origin of the state, the reasons for its continued existence, the nature of sovereignty and the proper sphere of government activities. Abstract as these speculations are, there may be found underlying them a common concern with the question of how the well-being of the people may best be furthered by government. The problem is as practical and as pressing in the twentieth century as in the days of Plato and Aristotle. The quest remains, although the answers to it change with every generation. Thus a study of the development of the British constitution shows political institutions responding to changing needs and evaluations—economic and cultural, as well as political—and, at the same time, by tradition and example influencing subsequent thought. Political ideas, like the problems from which they spring, have a way of remaining very much alive and perennially new, despite the sea-change which centuries work upon them. In the belief that it is valuable for the student of the structure of government to relate political forms to political theories, it is proposed to devote this introduction to a brief analysis of some of the major ideas underlying the discussions of political institutions contained in this volume.

Contemporary studies of the British constitution have particular value, not only as sources of information concerning the way in which government actually worked at a certain time, but also for the picture they give of the way in which the writers regarded the government of their day, their views of its strength and weakness, and their attitude toward new precedents, not yet hardened into custom, only later to become conventions of the constitution. It is natural enough that scholarly students and critics, from the time of Sir John Fortescue to that of Bagehot and Dicey and commentators of the present day,

should discuss not only the changing structure of politics, but should criticize and approve, according to their various lights, the strictures and panegyrics of their predecessors in the distinguished procession of statesmen, lawyers, civil servants, and teachers who have contributed to the multitudinous studies of the British constitution. It is a moot point whether the similarities or differences in attitude between writers separated by the span of centuries are the more interesting. Dicey's famous exposition of the rule of law stems back to the advocacy of Sir John Fortescue and Chief Justice Coke. Yet his horror of administrative law, as an abomination native to the continent from which England was happily free, he himself modified very considerably before his death, and his conviction that administrative tribunals must spell the doom of civil liberties is shared by few of the most penetrating critics of the present day. Bagehot's brilliant refutation of the theory of a clear-cut division of powers between the executive, legislative, and judicial branches of government, leading to his conclusion that the cabinet is the hyphen fastening the legislative to the executive part of the state, was an illuminating commentary upon the views of Locke and Montesquieu, a conclusion no less apposite today—eighty years later—than when Bagehot first brought out his study of the English constitution. Yet his grave doubts as to the probable ill effects of the avalanche of democracy to be expected from the passing of the Second Reform Act of 1867—the year in which his essays were first published in book form—fall oddly upon the ears of a generation which takes the adult franchise for granted.

Many of the predictions made in 1885 by Sir Henry Maine concerning the increase in power of the executive, the development of the party system, and the decline of the aristocracy and the House of Lords, have been fulfilled with remarkable accuracy. There is an equally striking difference between the gloom with which he forecast these changes and the assumption of their beneficence made by the majority of twentieth-century students. Yet the intelligent critics of today, particularly those living in federal countries, cannot afford to dismiss without a thought Maine's query as to whether the tendency of popular governments, as their electoral basis has widened, has not been "towards a dead level of commonplace opinion, which they are forced to adopt as the standard of legislation and policy."<sup>1</sup> Nor can they ignore Maine's concern about the menace to popular government if irreconcilable cleavages, triumphing over a mutual concern

<sup>1</sup> Sir Henry Maine, *Popular Government* (London, 1885), p. 41.

for the preservation of democratic methods, develop between members of different parties, "associations of men who hold political opinions as men once held religious opinions. They cling to their creed with the same intensity of belief, the same immunity from doubt, the same confident expectation of blessedness to come quickly, which characterises the disciples of an infant faith."<sup>2</sup> This menace to the popular government has been recently expounded, though with a different an emphasis and conclusion as could well be imagined, by so unlikely a supporter of Maine as Professor H. J. Laski.

From the sixteenth to the twentieth century, students of the constitution, no matter how diverse their points of view, have shared a common interest in the fundamental problems of the relationship between the citizen and the state and the reconciliation of liberty and law—problems to which every generation gives its own answers in the light of the changing needs and values of the time. The constitutional historian takes a bird's eye view of men's efforts to grapple with the perennial problems of political philosophy as expressed in the altering structure of government. The tentative experiments of one age may become the accepted shibboleths of the next, may be discarded as useless, or, more probably, may be transmuted to meet the needs of a new generation in a form owing much to historical precedent but much also to the conflicting opinions and pressures of the time.

The study of government in the light of historical perspective provides a constant salutary warning against uncritical acceptance of the political tenets and aphorisms of our own and of other days. The point is well illustrated in the chapter from A. F. Pollard's *Evolution of Parliament* which is the first selection in this volume. In discussing the development of the idea of representation, Pollard points out that the theory that the representative should be bound by the will of his constituents is a very modern one. The argument whether a member of parliament should be a representative or a delegate is primarily a product of the successive widening of the franchise in the nineteenth century. The Middle Ages knew nothing of instructions to members from constituencies nor yet of election promises; and the conception of the medievalists who wrote of the sovereignty of the people was very different from that of eighteenth- and nineteenth-century upholders of the popular will. The former meant by "the people" a stratum in the hierarchical structure of society; the latter had in mind the indi-

<sup>2</sup> *Ibid.*, p. 25.

vidual men and women composing the body of citizens. Only in the last hundred years has the candidate been held to be directly responsible to that section of the people whom he represents. When representation meant additional taxation, there was little clamour for the privilege, which until the sixteenth century was regarded chiefly as one of the more unpleasant of a vassal's feudal duties. Only as it was realized that through representation the people might impose their will upon the crown, instead of *vice versa*, did the concession become a consummation to be wished for. With the sixteenth-century abolition of the requirement that members of parliament must live in their constituencies, there grew up the tradition which has played so important a part in English public life, that the member represented the interests of the country at large, not only those of the locality which returned him—a theory whose classical exposition is to be found in Burke's retort to his constituents that "You choose a member indeed; but, when you have chosen him, he is not a member of Bristol, but he is a member of Parliament."<sup>3</sup> The national point of view, which it became commonplace for parliamentarians to adopt from Elizabethan times on, may well be viewed with a certain nostalgia by twentieth-century politicians. Yet the success of British statesmen in retaining a concern for the good of the country at large has been conspicuous in comparison with the overwhelming stress upon sectional interests which too frequently characterizes their New World counterparts.

The selections dealing with the development of the modern party system have been placed at the beginning of this volume because the functioning of twentieth-century political institutions is best understood when viewed against the background of the structure of parties. Their growth and organization may not be the most fundamental of the great political developments of the nineteenth century, which include such major constitutional landmarks as the rise of the modern cabinet system, with its implications for responsible government, the reform of the civil service, the concomitant increase in power of the executive, the tremendous expansion of the franchise, the development of local government, and the decline in power of Bagehot's "dignified" elements of the constitution, the crown and the House of Lords. But these major changes of the nineteenth century, whose

<sup>3</sup> In his "Speech at the Conclusion of the Poll," published in *Works* (1826 ed.), vol. III, p. 19. Cited in G. S. Emden, *The People and the Constitution* (Oxford, 1933), p. 25.



roots extend back to far earlier times, and whose ultimate development is not yet at an end, can all be most adequately comprehended against the setting of the modern party system. This development, indeed, played a major role in hastening most of the other great constitutional changes of the period.

It has not been thought necessary to include specific discussion of the merits of the two-party as opposed to the multiple-party system, yet light is thrown on the subject by the contemporary analysis of the decline of liberalism by William Clarke, one of the early Fabians. His article was written in 1900, the year in which the Labour party came into being, and five years before the last great Liberal government began. Clarke's study of the reasons for the decline of liberalism so closely parallels those of most modern students, writing from the vantage-point of the perspective of half a century, as to be almost prophetic. For he held that the cause of the decline of the British Liberal party was to be found in the remarkable success with which it achieved its objectives, and in the willingness of the Conservative party to take over much Liberal doctrine, once its popularity with the people had been demonstrated. Clarke thus appears to be one of the earliest commentators to uphold the theory that, having largely achieved the goals which it had set for itself, liberalism declined from its former honourable estate because of an inability to discover new worlds to conquer.<sup>4</sup> Its masterly adoption and implementation, in the great ministries of 1905-15, of a radical programme, serves but to confirm Clarke's earlier diagnosis. By 1918 the serious goals of nineteenth-century liberalism which were still live issues, and remained to be achieved, had almost without exception been incorporated in the platforms of either the Conservative or Labour parties.

Clarke's stress on each party's need for a strong opposition is an interesting anticipation of the much more elaborate treatment of the subject given later in this volume by W. I. Jennings in his article on "The Technique of Opposition." "If the other party is to take exactly the same line as your own, where will you get that criticism which every sane man must see is essential for the life of a free state?"<sup>5</sup> The query typifies the impatience of orthodoxy, the distrust of censorship and the desire for the paralleling of free debate by free criticism which

<sup>4</sup> "The importance to nations of continuing to be faced by fresh challenges provides one of the major themes in Professor Arnold Toynbee's monumental *Study of History*."

<sup>5</sup> William Clarke, "The Decline in English Liberalism," (*Political Science Quarterly*), vol. XVI, 1901, pp. 452-60).

have been essential components of English democratic thought since the seventeenth-century blast of the *Arcopagitica*: "For this is not the liberty which we can hope, that no grievance ever should arise in the Commonwealth, that let no man in this World expect; but when complaints are freely heard, deeply considered, and speedily reformed, then is the utmost bound of civil liberty attained, that wise men look for." <sup>6</sup>

Criticism of the inadequacies of legislative assemblies has become so fashionable that it is now common to open studies of these chambers with an apology. Sir Bryan Fell, in his article reprinted from the *Nineteenth Century and After*, deftly corrects this dismal practice by noting that there is little sense in criticizing parliament for the amount of time it spends in talk, when that is exactly what it is there to do. Sir Alan Herbert, who recently raised the same issue in his "Point of Parliament," makes the pertinent comment that if parliament once began to act without first talking there would be an immediate revolution.<sup>7</sup> Reasonably full debate upon conflicting points of view is, indeed, as has been noted, among the prime requisites of the democratic method of government.<sup>8</sup> The practice is one of respectable antiquity, having been commended some 2,400 years ago to the citizens of the first great democracy, Athens, by Pericles in his funeral speech upon those who fell in the Peloponnesian War. "We regard a man who takes no interest in public affairs, not as a harmless, but as a useless character; and if few of us are originators, we are all sound judges of a policy. The great impediment to action is, in our opinion, not discussion, but the want of that knowledge which is gained by discussion preparatory to action. For we have a peculiar power of thinking before we act and of acting too, whereas other men are courageous from ignorance but hesitate upon reflection."<sup>9</sup> Upholders of a point of view in whose defence they cannot muster adequate arguments will do well to re-examine the basic tenets upon which their faith is grounded. For the democratic state lives by criticism and demands a deep underlying concern on the part of members of all parties for the continuance

<sup>6</sup> *Milton's Prose* (World's Classics Series, London, 1925), p. 276.

<sup>7</sup> A. P. Herbert, *The Point of Parliament* (2nd ed., London, 1947), pp. 1-2.

<sup>8</sup> Cf. John Stuart Mill's comment, "I know not how a representative assembly can more usefully employ itself than in talk, when the subject of talk is the great public interests of the country." *Representative Government* (Everyman ed., Toronto, 1925), p. 240.

<sup>9</sup> Thucydides (translated by Benjamin Jowett, 2nd ed., Oxford, 1900), vol. I, book II, chap. XL, p. 129.

of government by discussion, by persuasion, and by agreement, in preference to the greater short-term efficiency of totalitarianism, the slowness of democracy being part of the not excessive purchase price of political freedom."

Briefly, it might be urged upon critics of the inadequacy of the House of Commons to fulfil its functions, that the whole necessary apparatus of parliamentary government should not be condemned because on occasion the machinery creaks. A more useful method of attacking the problem is that of W. Ivor Jennings in his eminently practical little study, *Parliamentary Reform*, from which two chapters are here reprinted. It is clearly desirable that attempts should be made to remedy procedural defects in dealing with the vast volume of legislation which threatens to swamp most modern popular assemblies, and there is no reason to despair of such efforts being crowned with a reasonable degree of success. Even were a much less optimistic prediction to be made, it should be unnecessary to urge the value of the service rendered by a body such as the House of Commons, as the citadel of representative government, in providing a forum for public opinion, a debating ground for issues of public policy, and a sounding-board for the views of the country.

There have been numerous claims, of recent years, that representative government is largely an illusion, a product of what psychologists delight to designate as wishful thinking. Greater perspicacity, it has been suggested, is shown in the endeavour to remedy the defects in the machinery of democratic government, while recognizing its shortcomings, instead of despairing of what is, when all is said and done, still the best form of government which has as yet been devised. The articles in this volume on steps toward electoral reform and on the use of advisory bodies attack the problem from this point of view. There is admittedly danger lest the ordinary person fall into the error of thinking of himself as on one side of the fence with the government upon the other, overlooking the obvious fact that political institutions are simply the mechanism by which men have decided that they wish to carry out certain necessary tasks. There is justification for the old dictum that in the long run people get the kind of government which they deserve. It is important to do everything possible to ensure that citizens in a democracy shall feel responsible for active participation in

\* Cf. The discussion in R. Dawssett, *The Essentials of Parliamentary Democracy* (London, 1937), particularly Chapter V. This chapter contains an admirable discussion of the problem of party agreement upon fundamentals which it is frequently urged that democratic government demands.

their own government. One of the devices to this end which Great Britain has found most promising has been the growing use of advisory bodies, whose personnel is composed at least in part of laymen. Royal commissions may be cited as one example; select or standing advisory committees are another; conferences on special problems, composed of members drawn from both Houses of Parliament, form a third. Two of the best-known examples of the second group are the Machinery of Government Committee, which reported in 1918, and the Committee on Ministers' Powers, whose report was published in 1932. Their outstanding contributions to the study of the practice of government need not be laboured. The value of advisory committees, in which various kinds of expert and representative lay opinion may be usefully combined, has long been strikingly demonstrated in the sphere of local government, and has been increasingly recognized as having a contribution to make in connection with the work of the central administrative departments at Whitehall. Among the advocates of this latter development so acute a critic as W. Ivor Jennings has been notable. Increasing use of advisory committees by ministerial departments should do much to remove grounds for the accusation, somewhat less common now than in the nineteen-thirties, and at all times largely ill-founded, of the bureaucratic action of civil servants who have lost touch with the needs and opinions of the community. Such committees may also help to smooth the way toward desirable reforms before their necessity becomes acute. The successful use of advisory bodies naturally depends upon their being assigned a real function, and upon the existence of a serious intention on the part of the government of making use of their findings and advice, which need not be synonymous with always carrying exact recommendations into effect. It is hardly necessary to point out that there is no real justification for the appointment, for instance, of a Royal Commission, merely as a means of postponing until the Greek Kalends the discussion of an awkward topic.

The doctrine of responsible government would seem to involve advisory committees remaining, in the last analysis, purely advisory, since the minister and government of the day must ultimately accept responsibility for policy. It may not always be easy to persuade competent people to retain an interest in serving on such committees if their advice is not accepted. Yet this possible difficulty does not outweigh the advantages inherent in a practice which helps to keep the government more closely in touch with the people. More serious diffi-

culties are probably to be found in the development, which is becoming increasingly common, of public service boards or corporations not responsible to any minister. These have the undeniable advantage of being able to act more quickly and to make adaptations of policy more readily than a Whitehall Department, where changes must run the gauntlet of debate in Parliament. Yet if their use in democratic countries is to be extended, as it has been to a very marked degree since the end of the First World War, some arrangements should be made for reporting to parliament at least once a year upon the progress and policy of such public service corporations."

A distrust of too much democracy is the real and as yet unresolved issue lying behind the long controversy between the Lords and the Commons. It is generally agreed that the nineteenth-century House of Lords stood much in need of reform such as that which altered the House of Commons out of all recognition. Asquith, speaking in the House on the Parliament Bill, on February 21, 1911, might well describe the all too substantial pageant of the Lords as "an indefensible paradox," yet he went on to say that he did not propose to dispense altogether with a second chamber, being mindful of England's one unfortunate experiment, under Cromwell, with unicameral government. Indeed the preamble to the Parliament Act specifically states that "it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of a hereditary basis." The difficulty of devising a good second chamber, together with a still widespread attachment to the aristocratic tradition has been responsible for the fact that such substitution has not yet been made. Some weight must also be given to John Stuart Mill's argument for two chambers, in order that neither house "may be exposed to the corrupting influence of undivided power."<sup>1</sup> The basic problem remains, recognized perhaps more clearly today than thirty-five years ago, that the essential paradox lies not so much in Great Britain's "peculiar institution" of an hereditary upper house, as in the claim, by no means confined to the British Isles, that a democratic government requires some kind of second chamber, primarily to check the anticipated excesses of democracy in the first. On these premises,

<sup>1</sup> One of the most valuable of the numerous discussions of this subject is to be found in *Public Enterprise* by W. A. Robson (London, 1937). The general conclusions given in Chapter XI are particularly interesting.

<sup>2</sup> *Representative Government*, p. 325.

the question naturally follows as to what guardian body may be expected to check the conservative excesses of the Lords? If the answer is the people, it is not immediately obvious why they cannot be trusted, without the intervention of a "sober second thought," to put into power the kind of government which they want, and to change it if it does not act in accordance with their desires.

It has been suggested that there is an alarmingly widespread scepticism concerning democracy, even in the countries which have just emerged from a six years' struggle in defence, among other things, of the democratic form of government. Some have come to take democracy too much for granted, without being able or willing to give a reasoned argument for their faith in what is doubtless the most difficult, if the most rewarding, form of government. Others, who pay lip service to the theory of democracy, fundamentally distrust it in practice. Yet though the totalitarian method of solving differences and carrying on the everyday business of life may be more rapid and in some ways simpler, it is not widely held to be better. Those who believe in democracy and are advocates of a second chamber should in all honesty admit the dilemma involved in a desire to place a bridle upon a democratically elected representative assembly.

The argument obviously does not apply to the crown, an even more "dignified" part of the British constitution than the House of Lords. After all, the objection to an upper chamber is not that it is dignified. The House of Commons, as Bagehot pointed out, is also a dignified body, though it is more important that it should be efficient than that it should be dignified. Democracy and dignity are not inherently incompatible. The continued prestige and usefulness of the British monarchy, on a largely formal plane, provide an excellent example in point. It is not necessary to subscribe to Berriedale Keith's doubtful theory of the king as guardian of the constitution to grant the value of the crown's role, both in Great Britain itself and in the Commonwealth.

Perhaps one reason why the British have been more successful than many other peoples in practising the difficult art of adapting political institutions to changing ideas of what democratic government demands is because they have been more inclined to subject these institutions to criticism than to veil their defects with praise. The course of statesmen and civil servants alike has had to be steered between the Scylla of lack of leadership amounting to incompetence, and the Charybdis

of executive efficiency variously described by its detractors as the new despotism, bureaucracy triumphant, or cabinet dictatorship. The House of Lords is criticized for being dignified but inefficient. The House of Commons is said to be unrepresentative. The cabinet and civil service, it is claimed, are too autocratic. Clearly it is not possible to please all the people all the time. The element of truth in these allegations has on more than one occasion led the unsuspecting and those with an axe to grind to join in a hue and cry whose chief danger lies in the possibility that instead of leading to a desire to correct defects it may rather breed an unintelligent and passive disillusionment with the method of democratic government. And half-truths are proverbially more difficult to counter than allegations which can easily be demonstrated to be entirely false.

Those concerned about what seems to them the undue encroachment of executive power would do well to remember that after all a government is returned to office for the purpose of governing in accordance with policies whose lines have been approved at the polls by the electorate. In the British system of responsible government, the cabinet holds office, as Professor Wheare points out in the article reprinted here, precisely because it retains the confidence of a majority of the House of Commons. This confidence and support being lost, it also loses office, the Opposition standing ready to provide an alternative government. It is also worth remembering that cabinet decisions, like party platforms, represent compromises. And compromise is the very stuff of democracy. The occasional salutary lack of automatic unanimity within the ranks of the present British Government, despite the fact that Labour is the most highly organized of the parties, has recently been convincingly demonstrated. It is, however, obviously desirable that such demonstrations should remain the exception rather than the rule in order that the ministry of the day may be able to get on with the business of government, and that the electors may in general have a reasonably clear idea of the policies which they are supporting.

Criticism of executive power is levelled perhaps most frequently against the civil servants who staff the ministerial departments in Whitehall. Yet there appears, on examination, to be little more substance in such charges than in those of cabinet dictatorship. Even the Committee on Ministers' Powers was forced to admit that it found no evidence of a plot on the part of civil servants to extend their own

powers. As Lord Beveridge has pointed out,<sup>18</sup> public servants cannot at one and the same time be expected to make rapid decisions and to be infallible. It is no inconsiderable achievement that the British civil service is highly intelligent and incorruptible.

The central departments undoubtedly exercise a considerable amount of control over the local authorities, otherwise national standards in matters such as health, welfare, and education would be unattainable. Yet a considerable degree of flexibility and local autonomy are inherent in the relationship. The man who votes for a county councillor undoubtedly thinks that he does so in order to carry out his own ideas concerning problems of local government, and not to implement the view of officials at Whitehall. The voluntary and intelligent participation in the everyday affairs of government that is achieved by the hard work of ordinary men and women on local councils and their committees parallels the service of laymen on advisory committees at a national level. Both are instances of practical ways in which the problems of government may be kept close to the people, and the professional administrator more easily understand the flesh and blood realities obscured behind the voluminous files of an office in Whitehall.

Men's ideas concerning the sphere and function of government have almost everywhere—and not least in Great Britain—changed drastically in the eighty years since Bagehot wrote *The English Constitution*. It is a commonplace of the present day to say that two of the major tasks of the modern state should be the provision of as full a measure of employment as possible, at decent wages, and of a far-reaching social security programme. Listing such goals as primary aims of government would have sounded odd in the nineteenth century, despite the sporadic beginnings of comprehensive social legislation under Bismarck in the eighties and in the Scandinavian countries and New Zealand in the nineties. The social and economic upheaval that followed in the wake of the industrial revolution, combined with the very different kind of House of Commons returned after the great Reform Acts of the century gave the franchise to all adult men, resulted in new problems and new ideas of ways to meet them. The theory that the House of Commons should spend most of its time passing laws was a nineteenth-century conception, born of the need for regulation of industry, of the development of local govern-

<sup>18</sup> In *The Public Service in War and Peace* (London, 1920).



ment, and of the demands made by the growing labour movement. The conception that the task of government is more than the regulation of a mechanism, to keep it in efficient working order, that it is rather to be sought in the provision of services, is essentially a twentieth-century idea. It is to a considerable extent responsible for the increasing pressure of business in the House of Commons and for the mushroom growth of public administration by the civil service, which have been viewed with such alarm by critics like Lord Hewart, and with enthusiasm by the advocates of what is not too happily described as the "positive" state.

It is, of course, new conditions which have been largely responsible for producing new theories of government, rather than the theories which have changed the conditions. This is not to maintain that ideas have no effect. The process is reciprocal, and the search for the interrelationship of cause and effect a favourite pastime of philosophers. Speculation as to the origin of government is now out of fashion, yet there would still be considerable agreement with Aristotle's view that the state remains in existence for the furtherance of the good life. If we no longer identify the good man with the good citizen, and believe that the state is but one of the great associations which helps to afford some of the opportunities for the good life, without itself embodying it, we still agree that the sole object of government is the well-being of the governed." The British constitution offers an example of the effort to achieve by slowly evolving democratic means, that in which men have from time to time conceived their well-being to consist.

" Cf. John Stuart Mill, *Representative Government*, p. 193

## *Part One*

# THE PARTY SYSTEM

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"If I could not go to heaven but with a party, I would not go there at all."

THOMAS JEFFERSON, in a letter to a friend written in 1769.

*The Growth of Representation\**

THE fundamental difference between the English and other parliaments lies . . . in the fact that it combines a system of popular representation with a high court of justice. Unlike all other courts of justice, it is therefore representative, and unlike all other representative assemblies, it is a court of justice. Further, the court was also the council, and a parliament was a joint session of executive, judicature, and legislature. This connexion between the governing and representative bodies was indispensable to national democracy. City states can govern themselves by direct action without representation. National states can be maintained without representation, but without it they cannot govern themselves or determine national policy. Aristotle's maxims about the limited size of a state are sufficiently familiar; but they are all based on the assumption that a state cannot be self-governing unless the citizens govern directly, and themselves fulfil the functions of legislators, judges, generals, and admirals. According to the Athenians, the state required the whole life of its citizens: they were to be ready to undertake any political duty, and every other claim on their time was subordinate. A man who had to earn his living should be precluded from citizenship, because he lacked time and energy for public activity; and the occasional exercise of a vote at the polling booths would have seemed to them a poor qualification for citizenship. This conception in itself was fatal to modern ideas of democracy, because the mass of producers were excluded from political rights and duties; in Athens they were largely slaves, and Athenian democracy was really an aristocracy based upon the most odious of class distinctions. No doubt it rendered a high ideal practicable for the favoured few, who were

\*A. F. Pollard, *The Evolution of Parliament* (Longmans, Green & Company, 1926). Reprinted by Lind permission of the publishers

## The Party System

expected to realize themselves and attain their highest individual development in the service of the state. But even the capacity of virtue was denied to the slave and the mechanic; an impassable gulf was fixed between them and the citizen; most men were slaves by nature, and such they must remain. The non-Greek peoples were called barbarians and excluded from the scope of Greek morality.

The Romans were more cosmopolitan; they disbelieved in this natural inequality of men, and Cicero thought that all men were capable of progress and of virtue. But the absence of any idea of representation prevented the realization of these comparatively liberal views in the expanded Roman state. Rome as a city could be democratic, but not as an empire; and the wider grew Rome's dominion the more autocratic grew its government. The more its sway expanded, the more did its governing class contract. Direct popular participation in politics can never be more than municipal in scope, and the city-democracy that tries to govern an empire fails in its task and incidentally ceases to be a democracy. Athens, Rome, Venice all point to the incompatibility of *imperium et libertas* when either is divorced from the principle of representation.

The evolution of this principle has, therefore, provided an escape from the dilemma upon either horn of which every ancient state was sooner or later impaled, has rendered possible the national democratic state, and has reconciled liberty and empire; and the credit for this discovery has been claimed for political or ecclesiastical theorists of the middle ages. Representation has been regarded as a great democratic principle first elaborated and applied in the organization of the friars and particularly of the Dominican Order in the thirteenth century, and its adoption for parliamentary purposes has been ascribed to the influence which Dominican confessors exerted over the minds of English kings and statesmen.<sup>1</sup> The part played by theorists in the practical development of human affairs is a question upon which theorists are apt to differ from other people; but probably the theorist, especially if he has been fortunate enough to possess a great gift of literary expression, has received more than his share of responsibility for the good and evil in history. Machiavelli is believed to have corrupted the politics of the sixteenth century, Locke to have prepared men's minds for the Revolution of 1688, and Rousseau to have stimulated that of 1789. It is well to remember that Machiavelli's *Prince* was not written until real princes

<sup>1</sup> Cf. E. Barker, *The Dominion Order and Convocation*, 1913.

had given the most striking manifestations of his principles, that Locke's *Two Treatises* were published two years after the Revolution of 1688, and that Rousseau's resonant phrases were borrowed from ancient Roman law. It was the aptness of these doctrines to the conditions of the time that gave them their vogue, but they did not create the conditions, and in other circumstances would have fallen on stony ground. The soil is not less important for the harvest than the seed, and in the case of political ideas the seed is in the air, blown by the wind, and not sown by the hands of individual men.

Representation is, moreover, an ambiguous word which needs to be defined before we can deal with its development. It does not necessarily imply election. When Emerson wrote his *Representative Men* he said nothing about a popular vote; nor was Hobbes thinking about the franchise when he described the sovereign as the representative of all the citizens. Charles I on the scaffold claimed to be the true representative of his people; and the house of lords has not infrequently made the same claim against the house of commons. In Germany after 1815, when the constitution of various German states was under discussion, it was contended that the peasantry needed no special representation because they were adequately represented by their landlords; but there was no suggestion that landlords should be elected by their tenants. Nor does election necessarily mean popular election: the Calvinist commonly talks about the elect, but they are not chosen by ballot. Election does not, in the middle ages, reveal the person of the elector, and means no more than selection by the persons authorized to select. It is a matter of common knowledge that knights of the shire were selected in the county court, but by whom they were really chosen is merely a matter of surmise.

It is idle to seek the origin of representation in its vaguer sense; for the representation of states by their governments and ambassadors is almost co-eval with the state itself, and when Hobbes writes of the sovereign representative he is expanding the Roman juristic maxim *quod principi placuit legis habet vigorem . . . utpote . . . populus ei et in eum omne suum imperium et potestatem transferat*. Caesar was omniscient because Caesar was the repository of every citizen's powers; he was the universal agent, the representative of all. It was in this sense that the feudal lord represented his tenants and that the priest and four "best" men represented the village community in the hundred and shire-moots; and it is only in this sense that parliaments were representative during the earlier periods of their existence.

Modern ideas of representation assume that the representative is bound by the will of the represented, but the will of the people is a modern fact which largely partakes of fiction. There seems in the middle ages to have been a total absence of specific instructions from constituencies to their members. Election promises were unknown, and they appear in their earliest form in sixteenth-century undertakings on the part of candidates to serve without exacting the wages their constituents were legally bound to pay. They were elected to bind their constituents, and not to be bound by them; they were to come empowered to execute the proposals of the crown, and not to impose upon the crown the proposals of their constituents. The growth of the popular will is the most important, obscure, and neglected content of English domestic history. It takes place behind and under the forms of representative government; but the form of government no more reveals its controlling power than the structure of a ship tells us whether it is run by the captain or the crew, and our representative parliament has been the instrument in turn of king, lords, and commons. It is easy, therefore, to exaggerate the importance of representative forms in the middle ages. On the other hand, it should not be ignored; the development of the machinery of the constitution was important before the people had learnt to drive it, and no democracy has ever constructed a workable constitution until it has been taught the elements of politics.

The earliest forms of English representation appealed to the interests of the government and the selfishness of the majority rather than to popular ambition. The "best" men, who were required by royal ordinance to attend the local courts, were certainly not elected; they may have been a sort of local hereditary aristocracy, like the twelve lawmen of Chester and Lincoln, of whom we read in Domesday. Under the Norman and Angevin kings they were probably the holders of the "best" tenements, and the obligation to do suit at the county court was attached as a condition to certain holdings. Representation was, in fact, an unpleasant incident of feudal service. This is the popular attitude in the middle ages towards parliament, as towards the shire court; it is not a question of who is anxious to serve, but of who is obliged to attend.

The business to be done is also that of the crown; it is the king's writs by which the suitors are summoned, and it is mainly the "pleas of the crown" that are heard in the county court. No doubt humble folk are interested in having justice done, but it is the crown which

discovers that *justitia magnum emolumentum*. Justice is done for the sake of its proceeds, and representation is used by the crown for purposes of justice and finance. The county court consists of jurors, who represent the county; *ponere se super patriam* is to go throw oneself on a jury, and the verdict of the jury is the county's act. It is also upon the county that taxation is later imposed, and its re-partition among the smaller communities is left to the county court or to the sheriff. But attendance is all a matter of service determined by tenure. By a statute of 1294 it is enacted that no one with less than forty shillings a year in land can be empanelled on a jury in the county court.<sup>2</sup> The boon consists in the exemption of the poor; but the burden becomes in time a franchise. These jurors elect the knights of the shire in the court to which they are summoned for jury-service, and in Edward I's statute we have the origin of the forty-shilling freehold vote. In 1430 the vote has become a privilege, and a famous statute prohibits its exercise by those whom Edward I had freed from jury-service. The important point is that every voter is first a juror: he is only a voter because he is a juror; he can only enjoy the franchise because he discharges an obligation. The vote is not a matter of individual right, but of duty to the community.

The idea that any one had a right to a vote would have been unintelligible in the fourteenth century, and its discussion would have seemed as irrational as the question whether a man has a right to serve on a jury to-day. He may have, but the point does not arise, because no one thinks of claiming the right. Men are more concerned with their liability to be summoned; and it was his liability to attendance at the shire court and to election as member of parliament that troubled our medieval ancestor. Whether he was a baron liable to individual summons or a knight or a burgess liable to election, he was anxious to escape the liability; and the constituencies were of like mind. Sometimes a recorder was bound by the terms of his appointment to serve the borough in parliament and thus relieve the burgesses. The two knights for Oxfordshire who fled the country on their election to parliament exemplified a common frame of mind among the elected, and Torrington, which secured a charter giving it perpetual exemption from representation in parliament,<sup>3</sup> typified the attitude

<sup>2</sup>*Rotuli Parliamentorum*, i. 116. Forty shillings had previously been made the limit of suits over which the county court had jurisdiction (Pollock and Maitland, ii. 540-1).

<sup>3</sup>*Rotuli Parliamentorum*, ii. 459b; Maitland, *Const. Hist.*, p. 174; the exemption was secured in 1366 and confirmed in 1368 (*Cal. Patent Rolls*,

of the electors. The shires could not expect such favours, and their representation remained constant throughout; but the 166 cities and boroughs from which Edward I had summoned representatives to parliament had sunk to less than a hundred in the reign of Henry VI. The number of members was smaller than these figures would indicate, for sometimes, to save expense, Cornish and Devonshire constituencies returned identical members.<sup>4</sup> Local parsimony prevailed over national interest. Not only did the borough which evaded representation escape the liability for members' wages, but it got off with lighter taxation. Boroughs which were represented only by the knights of the shire were taxed with the shires, and paid a fifteenth, while boroughs with representation of their own had their own taxation and paid a tenth. Parliamentary ambition was a feeble incentive when representation meant extra taxation, and when attendance at Westminster involved responsibility without power or profit. *Parliament was not then a career*, and it opened no paths to promotion. Members were men of business reluctantly diverted from their private affairs for occasional public service; and the few who aspired to political eminence had to choose the church or the service of the king or of a baronial magnate.

Representation, in fact, was nowise regarded as a means of expressing individual right or forwarding individual interests. It was communities, not individuals, who were represented, just as it was communities and not individuals who were taxed in parliaments. The poll-tax, when it appeared in 1380, was resented because it was a departure from the old tenths and fifteenths which were levied on boroughs and shires and were not imposed *viriliter*. The re-allotment of the burden of taxation, like the determination of the borough franchise, was a matter for local option and arrangement; and there was the greatest variety in both spheres. The statute of 1430 regulated the county vote on a national uniform principle; but until 1832 no attempt was successful to introduce uniformity into the borough franchise. In some boroughs the parliamentary franchise was limited to members of the governing body, in some of the "freemen"; in others it was extended to all who held burgage tenements, or even to all who paid scot and lot. This local diversity adds to the difficulty of the

1364-7, p. 246, 1367-70, p. 115). Edward III, in granting the petition of the men of Torrington, remarked that "*vos ea occasione laboribus et expensis multipliciter gravati fuisti, ad vestrum damnum non modicum et depressionem manifestam.*"

<sup>4</sup>See J. J. Alexander in *Trans. Devon. Assoc.*, 1910, xlii. 260. In 1362 one John Hill was returned for six Devonshire constituencies, and John Wondard for two Devonshire and two Cornish seats.



discussion whether women possessed a vote in the middle ages. That women could sit in parliament is certainly unproved, and the fact that the husband of a woman who held an entire barony was liable to a special writ of summons implies that she was exempt. The instances of women appearing in parliament, upon which reliance has been placed, relate to its judicial functions, and women still frequently appear in courts of law. The vote, it must be remembered, was grounded in jury-service, and unless it can be shown that women were personally liable for that and other forms of service, there is no reason to suppose that they exercised a parliamentary vote.

Nevertheless women did occasionally return, or assist in returning members to parliament, not because women's right to vote was admitted but because it was the land rather than men that parliament represented, and occasionally women held the land upon which the burden of representation had been fixed. Feudal service was always regarded as due from the land rather than from the individual tenant, and so long as the crown obtained its service it cared little who performed it. The liability was first the lord's, who generally passed it on to his tenants; but if tenants were lacking, the obligation reverted to the lord. Thus by the sixteenth century the borough of Gatton had lost all its burgesses, but retained its parliamentary obligation of service. The return was, therefore, made by means of indenture between the sheriff and lord of the manor; and once, at any rate, during the minority of her son, it was made by Dame Alice Copley. In dealing with medieval representation we have always to think in terms of feudal service rather than in those of democratic principle. The boroughs are represented because they are collective tenants-in-chief on the king's demesne; and the shires, too, are in a sense tenants-in-chief, in that they "farm" the royal rights of jurisdiction. Parliament was the king's head court, and it was composed of those who owed service to the crown.

But the feudal form was filling with the breath of national life and popular consciousness, the outcome of the fourteenth century and the sign of the passing of medieval things. The growth of a national literature illustrated by Chaucer and still more by Langland, and of a desire for national expression in religious thought

<sup>1</sup>This phrase was used by James I (*Prothero, Select Statutes, etc.*, 1898, p. 400), but not, as implied by Dr. Prothero, of the English Parliament. It occurs in his *True Law of Free Monarchies*, which dates from 1598, five years before James became King of England (see McIlwain, *Political Works of James I.*, Harvard Univ. Press, pp. xxv, 62).

exemplified by Wycliffe's works; the substitution of a national weapon, the longbow, for the mailed knight and the feudal castle; the development of industry and commerce at the expense of the agricultural monopoly of wealth; the triumph of national feeling over local particularism during the Hundred Years' war; the effect of the mobility of labour in breaking down manorial isolation, all made themselves felt in the parliamentary sphere. Classes that had been ignored were forcing their way into politics, and the beginnings of popular education were fostering a wider-spread national intelligence. The foundation of great schools and colleges and the growth of universities are familiar illustrations of this spirit. Not less significant was the fact that villeins, although they might be fined by their lords for so doing, were beginning to send their children to school.<sup>6</sup> Thus Langland found an audience, and the English people discovered itself. Prosperous villeins who sent their sons to school attended the county court themselves, and contributed to the tumultuary elections which led to the restricting statute of 1430. Similar irruptions into the oligarchical circles of municipal government led to corresponding restrictions of the municipal franchise.<sup>7</sup> These restrictions were less important and less permanent than the movement by which they were provoked, and their significance lies in the indirect evidence they provide for the growth of a political consciousness among the mass of the population. It may have been a sign of grace when the commons complained in 1436 that sheriffs often returned members who had not been elected.<sup>8</sup>

Probably here we have also the explanation of the curious fact that about then the ebbing tide of parliamentary representation begins to turn, and the number of boroughs returning members to increase. The lowest limit was reached in 1435, when only ninety-four made returns; Henry VI added eight and Edward IV five. Henry VII apparently made no change,<sup>9</sup> but under the later Tudors

<sup>6</sup>In 1372 a customary tenant was fined heavily by his lord (who was a bishop) for putting his son to school without the lord's leave (Maitland, *Collected Papers*, ii. 399).

<sup>7</sup>See my *Reign of Henry VII*, ii. 181-5, for restrictions on the borough franchise at Leicester and Northampton.

<sup>8</sup>*Rot. Parl.*, iv. 507.

<sup>9</sup>The difficulty of tracing accurately the growth of parliamentary representation is increased by the defectiveness of the lists of members printed in the *Official Return*. Apart from one for 1491 in *Harleian MS.* 2252, f. 28, there are no lists between 1477 and 1529, although research among borough archives and elsewhere may help to supply the deficiency. Something may also emerge from the neglected records of the Crown Office recently transferred from Westminster to the Record Office.

the increase was rapid and steady. Later on we shall see that the attribution of this increase to Tudor designs upon parliamentary independence is not a tenable theory; and even if it were, their attempt would illustrate their appreciation of the importance of parliamentary support. It is more probable that the creation of new boroughs, and restoration of parliamentary representation to others which had lost it, was due to a deeper national impulse. We have at least one protest from a Tudor secretary of state that there were too many members already, a refusal to listen to Newark's petition for representation, and a hint that the government in 1579 contemplated the abolition of rotten boroughs.<sup>10</sup> The demand for representation now came from below, from prospective electors themselves or from neighbouring magnates seeking an easy seat in the house of commons. Boroughs were bought up in the sixteenth century; the eldest sons of peers became candidates for election; the proceedings of the house were considered worth recording in *Journals*; candidates offered to serve without their wages; and even bribed the electors, not to escape, but to secure, election. Men no longer fled the country when elected, or transferred their liabilities to their tenants. A member of parliament had become an important person, a seat in the house an object of ambition, and the house itself a place of political power. The seats of the mighty were filling with popular candidates. Elections were contested, and electors were canvassed; boroughs refused to accept neighbouring magnates' nominees, and riots were not infrequent. The burden of representation had become a privilege, because people had grasped the fact that through it they could impose their will on the crown, instead of the crown through it imposing its will upon them. The forms of the partnership remained, but the predominance was changing hands.

National spirit had refused local prejudices. Members are regarded as serving their country and not merely their shires or boroughs; and residence ceases to be an indispensable qualification. The legal requirement stood, and the matter was often debated in the house; but the national view prevailed over the letter of the law, and parliament

<sup>10</sup>T. Wilton to the Earl of Rutland, June 17, 1579 (*Rutland MSS.*, Hist. MSS. Comm. i. 117): "I have moved the Queen for the town of Newark, and have obtained her consent that the book shall be engrossed by Mr. Attorney, and all the articles allowed, save the nomination of two burgesses. It is thought that there are over many already, and there will be a device hereafter to lessen the number for divers decayed towns." Newark did not obtain parliamentary representation until 1673 (*Official Return*, i. 526).

was saved from the dead hand of medieval parochialism. Other influences, no doubt, contributed to this result; insistence upon residence would have defeated aristocratic designs on the commons, and have excluded many privy councillors of the crown. But the substitution of landed gentry for timorous townsmen stiffened the back of the commons, and is definitely assigned by a Venetian ambassador as the cause of the recalcitrance of one of Mary's parliaments;<sup>11</sup> and even the election of privy councillors testified to the growth of popular influence. In Edward I's reign a councillor was summoned *ex officio* to parliaments, and a parliament was a meeting between council and estates. Now, instead of sitting *ex officio*, the privy councillor sought popular election, and in Thomas Cromwell and William Cecil we have the first striking examples of the "old parliamentary hand": both sat continuously in the commons until they were raised to the peerage, and both were there in the interests of the nation and not in those of their constituencies. The *communitates* have become the *communitas*, England is one whole instead of many parts, and in politics and history the whole is greater than the sum of all the parts. Out of the fusion arises the national patriotism of Elizabethan England.

The sixteenth century is indeed the great period of the consolidation of the house of commons, and without that consolidation the house would have been incapable of the work it achieved in the seventeenth. Under the Tudors it becomes a compact and corporate unit, and acquires a weight which makes it the centre of parliamentary gravity. Its transference, in Edward VI's reign, from the chapter house to St. Stephen's chapel brings it under the same roof as the parliament chamber, and provides ocular demonstration of its position as an integral part of parliament. The commons no longer *comparent in parlamento* by traversing the street between the abbey and parliament with the Speaker at their head; they are already "in parliament" when they meet by themselves, and their domestic discussions become parliamentary instead of extra-parliamentary proceedings. Each representative is now a limb, a "member" of parliament, a phrase which appears in the fifteenth century,<sup>12</sup> was used by Henry VIII when vindicating the privileges of the commons, and gradually secured a popular vogue; and a prominent member is described in Elizabeth's reign as "the great parliament man." The house is a national repre-

<sup>11</sup>*Venetian Calendar*, vi. 251.

<sup>12</sup>*Rot. Parl.*, v. 240, vi. 191; cf. Smith, *De Republica Anglorum*, ed. Alston, p. 63.

sentative: every Englishman is "intended," in Sir Thomas Smith's phrase, to be present either in person or by proxy; and the house derives its authority from the fact that it embodies the will of the English people. The laxity which in the middle ages put up with the absence of a majority of elected members, and assumed that absence, like silence, gave consent, was no longer tolerated. The clerk kept a book of attendance: no member was allowed to go home without leave, and those who did so were prosecuted before the king's bench. Down to 1558 the leave had to be obtained from the crown: in Elizabeth's reign it begins to be granted by the house itself.<sup>12</sup>

Slowly, too, the house developed a corporate consciousness bred of prolonged and intimate association. The medieval parliament was an affair of weeks: it seldom had more than one session, and members rarely sought re-election. Every house was, therefore, a body of strangers, speaking perhaps incomprehensible dialects, distrustful of one another, here to-day and gone to-morrow, never, in most cases, to meet again, and utterly unable, on account of their transitory existence, to acquire confidence in one another or to develop leadership and parliamentary skill. On rare occasions before 1509 a parliament was called back for a second session; but it is during the reign of Henry VIII that the modern practice begins, and it begins with the parliament that wrought the Reformation. Summoned to meet on November 3, 1529, its existence was continued until April 4, 1536, and during that period it held eight sessions extending over more months than the days of the average medieval parliament. By the end of that period members of the house of commons must have acquired a familiarity among themselves, a knowledge of parliamentary procedure, and an acquaintance with national politics such as no house of commons had ever possessed before. The experiment was unique in the sixteenth century, but a later parliament of Henry VIII had four sessions, and the first of Edward VI had three. Mary saw fit to change her parliaments with greater frequency, and five were elected during the five years of her reign, only one of which met for a second session. Elizabeth had not her father's faith in parliament: but most of her parliaments sat for more than one session, one session lasted over three months, and one parliament was undissolved for nearly nine years. The leading members, moreover, both of the gov-

<sup>12</sup>A bill to control the unlicensed absence of members passed the commons, but not the lords, in January 1534-5, and three similar attempts were unsuccessfully made in the following session (*Political History of England*, vi 147-8), and yet another on November 9, 1558.

ernment and of the opposition, are constantly re-elected; the ordinary *personnel* of the house grew more stable; and if Cecils and Bacons placed parliamentary experience at the service of the crown, Nortons and Wentworths used it on behalf of the liberties of the commons.

Internal consolidation was accompanied by expansion, and the number of members increased during the Tudor period by more than fifty per cent. There were fewer than three hundred when Henry VII ascended the throne; there were more than four hundred and fifty when Elizabeth died. Henry VIII added eight members to the representation of Lancashire, two each to London and Middlesex, Cornwall, Norfolk, Suffolk, and Buckinghamshire, and one to Shropshire; he "shired" Wales and Monmouth and introduced twenty-four Welsh members to parliament; he also incorporated Cheshire, and even extended the parliamentary system to Calais, leaving the county palatine of Durham alone outside the national organization.<sup>14</sup> Edward VI added fourteen members to Cornwall, four to Northamptonshire, and two each to Hampshire, Yorkshire, Lincolnshire, Cheshire, Staffordshire, and Wales. Mary increased the representation of Yorkshire by ten members, that of Oxfordshire by three, of Kent, Northumberland, Norfolk, Hertfordshire, Buckinghamshire, and Worcestershire by two each, and of Northamptonshire and Berkshire by one apiece. Elizabeth's additions amounted to fifty-nine against forty-five made by Henry VIII, thirty by Edward VI, and twenty-seven by Mary; sixteen new members went to Hampshire, twelve to Cornwall, six to Suffolk, four each to Kent, Yorkshire and Lancashire, two each to Devon, Notts, Gloucestershire, Shropshire, Staffordshire, and Surrey, and one to Wales. It was reserved for James I to grant special representation to the universities of Oxford and Cambridge, which gratefully elected his nominees; but by 1603 the house of commons was more completely representative than it had ever been before, and in spite of the acts restricting the franchise it is probable that the electorate was also growing wider. The amount of free socage was increasing in the counties, and the bar of serfdom was steadily being removed; at the disputed Norfolk election of 1586 three thousand voters are stated to have been present,<sup>15</sup> though in the boroughs the widening of the franchise had to await the period of the Long parliament and the Commonwealth. The facile

<sup>14</sup>A bill "to have two knights from Durham into the parliament" was introduced in the house of commons on January 18, 1562-3, but apparently got no farther. The above figures are only approximate.

<sup>15</sup>D'Ewes, *Journals*, p. 396.

explanation of all this expansion on the theory that it was due to the efforts of the crown to pack parliaments will not bear examination. The Cornish boroughs, which are usually chosen to substantiate this hypothesis, were in reality notorious for the independent and even fractious spirit exhibited by their representatives and for the paucity of privy councillors among their ranks.<sup>16</sup> It is more reasonable to suppose that the house of commons was reflecting the general growth of national sentiment and of the popular desire for a voice in its own affairs. People who repudiated absolute authority in the church would not remain submissive to political autocracy.

There were, of course, defects enough in the sixteenth-century representative system from the modern point of view. The lower classes had small means of asserting what little political will they possessed; and the greater the influence which the house of commons acquired, the greater the eagerness of landlords and aspiring lawyers to manipulate its elections. The social status of burgesses rose with the prestige of the house, aristocrats canvassed for seats which medieval craftsmen had sought to avoid, and in the eighteenth century both houses of parliament were appanages of the highest class of society. But the electorate was never reduced to the same uniformity: the representative system consisted of sections or samples; but the sections were vertical, not horizontal, and the samples came from various social strata. The county voters had to be freeholders, and the restriction was arbitrary enough, but it included in the franchise many who were poor and excluded many who were rich. The forty shillings, which had been a serious property disqualification in the reign of Edward I, was a trifling sum in that of George III, and many of the forty-shilling freeholders must have been very poor men. Again, the franchise in many boroughs was democratic, more democratic before than after 1832; and while the great reform bill mitigated many abuses and swept away some anomalies, it disfranchised numbers of poor electors, and created a grievance which fostered the Chartist movement.

<sup>16</sup>At least four pronounced protestants sat for Cornish constituencies in the first parliament of Mary's reign; Peter and Paul Wentworth and James Dalton were elected by Cornish constituencies in Elizabeth's reign; and under James I and Charles I nearly all the leaders of the parliamentary opposition found seats at one time or other in Cornwall, including Sir John Elliot, Hampden, Coke, Sir E. Sandys, Holles, Hakewill, Sir R. Phelps, Sir Henry Marten, and John Rolle. Hallam's theory (*Const. Hist.*, i. 45) that these Cornish constituencies were created to foster the influence of the court over the commons is not corroborated by the evidence.

Feudal traditions, however, long clung to our franchise law, and with them the theory that it was the land, and not men which should be represented in parliament. The "stake in the country," which was used in the eighteenth century to defend the monopoly of political power by the landed aristocracy against the claims of mere wealth derived from banking or commerce, was employed in the nineteenth against the claims of intelligent poverty; and some contended that the number of a man's votes should be proportionate to his possessions.<sup>17</sup> Even now mere wealth does not entitle a man to vote at all unless that wealth is converted into terms of the tenure or occupancy of land and what stands thereon. Mere intelligence does not count at all in our franchise laws except in so far as it accounts for university representation. Vast inroads have, however, been made on feudal theory by ideas of universal suffrage and the real issue with regard to representation is whether the individual or the family is the unit to be represented.<sup>18</sup> Modern socialism tends to make the state the sole form of society and to weaken every other bond of association; and parliament instead of representing communities or families, is coming to represent nothing but individuals.

<sup>17</sup>These views were almost entirely abandoned in the debates on the Franchise Act of 1917.

<sup>18</sup>Since the enfranchisement of women by the Acts of 1918 and 1928, the issue has been settled in favour of representation of the individual. [Ed.]



## II

CECIL S. EMDEN

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### *Party Organization and Policy\**

#### *1. The organization of members*

BEFORE parties possessed central organizations, the chief method of keeping a party together and of ensuring some degree of collaboration in Parliament was by meetings of members outside the House of Commons, for the purpose of discussion and the stimulation of united action. "Private meetings" of members were held as early as 1640.<sup>1</sup> In the course of the eighteenth century there grew up a practice of Ministers summoning their adherents to meet together prior to the opening of sessions of Parliament.

It is clear that, in the early history of parties, considerable suspicion rested on any organization, by virtue of which members met outside the House and pledged themselves to vote together in a consistent manner. A Whig tract of 1701 entitled *A List of One Unanimous Club of Members of the late Parliament, November 11th, 1701, that met in the Vine Tavern in Long Acre, who ought to be opposed in the ensuing elections* illustrates such an attitude. This tract asserted the impropriety of the co-operation by the members, whose names were given, in voting against the abdication of James II and against recognizing William III.<sup>2</sup> Tory tracts appeared in answer to the Whig imputations and justified the party meetings. "It has been customary, as well as thought necessary, in all reigns, for members of Parliament to associate at what places they thought convenient, and never till now thought a crime"; and "as to a club of such

\*Cecil S. Emden, *The People and the Constitution* (Clarendon Press, 1932). Reprinted by kind permission of the publishers.

<sup>1</sup>*Journals of D'Ewes*, ed. Notestein, p. 22 (note).

<sup>2</sup>Protests against this kind of co-operation may have been made some few years earlier. Cf. *A List of one Unanimous Club of Voters in the Long Parliament Dissolved in 1678*, &c. (published in 1715).

members, mentioned in the scandalous pamphlet . . . there was no such club, except in the Parliament House, where they met for the nation's interest and preservation and to stand by His Majesty against the exorbitant greatness of France."<sup>3</sup>

As early as 1690 the Tory members dined together, to the number of one hundred and fifty, for the purpose of concerting measures before undertaking the general election campaign; and probably similar meetings were held by the Whigs during the elections of 1679-81, since they were more advanced than their opponents in the arts of party management.

Some few years before Walpole was First Minister there were regular party meetings of the members of Parliament who supported the Ministry. These meetings were summoned at the beginning of sessions. Their formal object was to hear a statement of the policy of the Ministry; but it is evident that some discussion ensued; and it may be assumed that the meetings were intended to encourage party loyalty. An entry in the diary of the First Earl of Egmont for 14 January 1734 is informative respecting this kind of party organization. He wrote:

"This day I had two letters, one to be at Sir Robert Walpole's to-morrow at seven at night, the other to be at the Cockpit on Wednesday at the same hour; but I intend to be at neither. The business is to be made acquainted with the King's Speech for Thursday next; the meeting for to-morrow is of a select number, at the other meeting all who please may come."

The Opposition also held meetings of members in Walpole's time. Old Horatio Walpole wrote in 1740:

"The opponents, flushed with their not being beat by a greater majority than 16, have met, Lords and Commons, to the number of 13 of the first and about 60 of the last at a tavern, and exhorted one another to steadiness and unanimity, and continuance in town to lay hold of occasion for the service of the public. . . ."<sup>5</sup>

<sup>3</sup>*An Answer to an infamous libel intituled a List, &c. (1710). An Answer to the Black List or the Vine-Tavern Queries (1701).*

<sup>4</sup>*Hist. MSS. Comm.*, vol. ii, p. 7; cf. a meeting mentioned in *Lord Hervey's Memoirs* (ed. Sedgwick), vol. i, pp. 179 ff. See also *Hist. MSS. Comm.*, 8th Report, Appendix, p. 223, 7 Dec. 1756, H. Digby to Lord Digby; W. Coxe, *Memoirs of Sir R. Walpole*, vol. ii, p. 201; W. Michael, *Englische Geschichte im Achtzehnten Jahrhundert*, vol. ii, p. 585; and an article in 44 *E.H.R.*, pp. 588 ff., by L. B. Namier, entitled, "The Circular Letters".

<sup>5</sup>*Hist. MSS. Comm.*, 14th Report, Appendix, Part IX, Buckingham, &c., MSS., p. 39; *Letters of Horace Walpole* (ed. Toynbee), vol. i, p. 173.

There is reported a numerous meeting of the members of Parliament "in the British interest" at the Fountain Tavern in the Strand in March 1743, "who solemnly engaged to give and promote an early and constant attendance in the next session, to support the Constitution and true interest of His Majesty's British dominions."<sup>6</sup> In 1751 the principal members of the Opposition met at Egmont's house with the object of forming plans for the future; and in 1755 sixty-two Tories met at the "Horn", "where they agreed to secrecy, though they observed it not; and determined to vote according to their several engagements on previous questions".<sup>7</sup> In 1762 the Duke of Grafton and other young men tried to co-ordinate the efforts of the Opposition by means of meetings of supporters. George Onslow was one of these and, on his information, Newcastle wrote to Hardwicke: "Our friends in the House of Commons are desirous of collecting themselves together, that they may know one another; for that purpose, they wish to have a meeting; they are sure they shall be 180 at least. This deserves consideration. . . ."<sup>8</sup> In 1769 Burke recorded an Opposition meeting. "All the minority," he said, "(however composed) dines together at the Thatched House".<sup>9</sup> Several of the clubs of the late eighteenth century, both those which were exclusively political, like the Whig Club, and those which were mainly social, like Brooks's, must have helped from time to time to hold together the members of the Opposition.

Occasional references such as those given above provide the chief evidence there is of party meetings in the eighteenth century whose object was the inducement of unity of action. But the independent manner in which many members voted indicates that the meetings that were held were either attended by an inconsiderable number or were insufficiently unanimous to secure any steady adherence to party.

In the first half of the nineteenth century there was, it seems, more frequent use of these gatherings, especially in the few years following the passing of the Reform Bill of 1832, a time at which efforts to obtain unity were particularly required. The foundation of the great social-political clubs of the Victorian period, the Carlton

<sup>6</sup>*Gentleman's Magazine* (1743), p. 161.

<sup>7</sup>Horace Walpole, *Memoirs of the reign of George II* (ed. Holland), vol. i, pp. 80-1, vol. ii, p. 13.

<sup>8</sup>C. P. Yorke, *Life of Hardwicke*, vol. iii, p. 438.

<sup>9</sup>*Hist. MSS. Comm.*, 12th Report, Appendix, Part X (Charlemont MSS.), vol. i, pp. 293-4. See also *Hist. MSS. Comm.*, 15th Report, Appendix, Part VI (Carlisle MSS.), p. 526, Anthony Storer to Lord Carlisle, 26 Nov. 1781.

Club in 1832 and the Reform Club in 1836, served to promote unanimity. But the elaboration of party organization, which began in the middle of the nineteenth century, soon made the earlier methods appear primitive. Though meetings of members of Parliament are still held for particular purposes, they are no longer used to maintain allegiance; and, with rare exceptions, the questions of policy with which they deal are special rather than general.

As regards the organization of discipline within the walls of Parliament, the Patronage Secretary (now the Parliamentary Secretary of the Treasury), who was first appointed early in the eighteenth century, probably exercised, soon after the institution of his office, many of the functions of a Government Whip and, it may be assumed, had an occasional counterpart on the Opposition side.<sup>10</sup> Prior to 1832, no doubt, these officials must have been concerned to influence elections as much as the voting in the House of Commons. But as the necessity for stringent party discipline in the House became more and more apparent during the nineteenth century, the numbers of Whips were increased and their importance became enhanced. In recent years, although the Whips find it requisite, in the normal state of parties, rather to collect their troops than to prevent their going over to the enemy, the marshalling of the forces to be led into the lobbies continues to hold an important place in the working of the party system.

## 2. *Central and local electioneering organization*

From the time of Shaftesbury's pioneer work as an election organizer in 1679 down to the middle of the nineteenth century, some rudimentary central party organizations intermittently influenced the character of the issues raised in the constituencies; and, for the best part of the last hundred years, the influence of central party organizations on the submission of issues has been both frequent and pronounced. To a less extent the constituencies themselves have been able, on some few occasions, to take part in the selection of questions for decision at general elections.

The model instructions to newly elected members, which seem to have been circulated by Shaftesbury's Green Ribbon Club in 1681, provide the earliest instance of any widespread attempt by a party head-quarters to dictate a party programme. Wharton, in the time

<sup>10</sup>Cf. *Hist. MSS. Comm., 15th Report, Appendix, Part VI (Carlisle MSS.)*, p. 547, Storer to Lord Carlisle, 11 Dec. 1781.

of Queen Anne, was the next politician to show a lively appreciation of the value of organizing a general election campaign. He possessed influence in several counties and was tireless in scouring the country in order to secure the return of Whig members. Walpole and the Pelhams, in the elections of 1722, 1734, 1741, and 1747, extended the method and the period of electioneering by arranging speech-making campaigns in the constituencies prior to the dissolution of Parliament. The Opposition soon followed suit. Pelham evidently viewed the new methods with repugnance. He wrote to Lord Essex that he had been involved in much trouble and expense and "most disagreeable conversation throughout the whole country". He had talked until he was hoarse, but hoped the results would be satisfactory.<sup>11</sup> An Opposition tract of 1741 sneered at Walpole's attempts to control the course of the general election in the country.

"You must know", it said, "that when the septennial wars [i.e. the elections at the end of the seven-years' Parliament] draw near, the Commander-in-Chief sits down at his desk, draws the plan of operation for the campaign, and appoints his officers, without any distinction whether they are veterans or raw inexperienced boys, provided they are well recommended, and promise to obey command. He then sends them to their particular posts, with proper ammunition, whilst he generally continues at his head-quarters; and his aides des camps are continually passing backwards and forwards, to bring him an account of the success of every battle."<sup>12</sup>

In 1747 the Duke of Newcastle organized a tour of the counties of Kent and Surrey, so as to influence the constituencies in those parts; but efforts of this character were more directed towards ensuring that family influence was fully exploited than towards comprehensive election management.

During the second half of the eighteenth century some of the Whig magnates employed men of organizing ability to forward the interests of the groups which they led. Rockingham expected his secretary, Burke, to do more than act as his personal assistant. Burke, indeed, has been described as having "suggested policies, drafted petitions, arranged for meetings, looked after elections, arranged everything and goaded everybody".<sup>13</sup> In general, however, party organization on a large scale must necessarily have diminished during the

<sup>11</sup>MS. Letter of 15 Oct. 1733, quoted in Torrens, *History of Cabinets*, vol. i, p. 433.

<sup>12</sup>*A Review of a late Motion, &c.* (1741).

<sup>13</sup>Ernest Barker, *Burke and Bristol*, p. 50.

reign of George III, at least so far as the Whigs were concerned; and it is probable that it was not until the period immediately following the death of the younger Pitt that there were signs of the resumption of any effective central organization in the Whig party. Lord Holland records that, in the election of 1807, the Whigs raised some few hundred pounds for the management of the press and the distribution of hand-bills.<sup>14</sup> The Whigs appear, moreover, to have had at this time a central fund, which was used to assist approved candidates in securing seats. The development was probably a fresh one.<sup>15</sup>

Each Reform measure of the nineteenth century, as it provided for further enlargement of the franchise, made it increasingly clear that success in election campaigns would depend on comprehensive arrangements, by which the local organizations in constituencies were linked up with a central party organization. Development on these lines had important effects on the relation of the electorate to the party system. The passing of the Reform Act of 1832 soon led to a quickening of interest in the possibilities of centralizing the conduct of election campaigns. Even prior to 1832, large sums were subscribed in London in the Whig interest and were dispensed by a responsible body, so as to assist needy candidates who supported Reform.<sup>16</sup> And a short-lived organization known as "The Parliamentary Candidate Society", having its office at the Whig head-quarters, the Crown and Anchor Tavern in the Strand, was instituted to co-ordinate information, with the object of recommending Whig candidates to constituencies. Large subscriptions were raised by Conservatives in preparation for the election of 1834, when a rudimentary central fund was initiated and a considerable organization of party activities was undertaken on Peel's behalf by Lord Granville Somerset.

By 1835 the Conservatives had formed local organizations; local registration societies had been instituted; and, after the Reform Bill of 1867 was passed, some local working-men's Conservative associations had come into being.

Until 1850 the party Whigs did much of the work suitable to a central organization. Improvement on this crude arrangement was largely attributable to Disraeli. Soon after the defeat of the Conservatives in 1852 he employed Philip Rose, a solicitor, and later

<sup>14</sup>Holland, *Memoirs of the Whig Party*, vol. ii, p. 227.

<sup>15</sup>*Memoirs of Sir Samuel Romilly*, vol. ii, p. 237.

<sup>16</sup>Roebuck, *History of the Whig Ministry of 1830*, vol. ii, p. 161.

one of Rose's partners, to undertake a revision of party organization in the country; and, in 1867, largely owing to Disraeli's enthusiasm, the National Union of Conservative and Constitutional Associations was established. For some years, however, the activities of this federation were not extensive, its conferences only being attended by a small proportion of the representatives of local associations. Disraeli, perceiving that the defeats of the Conservatives in 1865 and 1868 were due to lack of efficient organization, proceeded to set up a Conservative Central Office under John Gorst, who also became honorary secretary of the National Union.

The Liberals instituted a Registration Association in 1861; and, in 1877, Joseph Chamberlain founded the National Liberal Federation, which revolutionized the relations between central and local associations. He called a meeting of delegates of local Liberal associations; and a plan was outlined, which gave the party machine new features and possibilities. He emphasized the right of the people to direct the initiative in the selection of members and the framing of issues. The new organization, the caucus as it came to be called, immediately proved that, as an electioneering expedient, it was extremely effective. From 1880 onwards, many Liberal local associations chose candidates on condition that they adopted the party programme; and any Liberal candidate who offered himself in opposition to a nominee of the association was treated as a traitor to the cause. The procedure which had previously been used was entirely different. Nearly all candidates had offered themselves for election without formal adoption by a local body, though a few had been recommended by the head-quarters of the party; and there had been no arrangement by which candidates had become pledged to a uniform party programme.

The periodical meetings of the Federation soon became concerned with the "planks" of the party "platform", and the influence of the Federation in this respect was very considerable in the years between 1883 and 1895. In 1883, 2,500 delegates from 500 associations passed resolutions in favour of the extension of household suffrage to the counties and the admission of women to the franchise. A meeting of the Federation in 1886 decided on a programme which included Home Rule, reform of the land laws, a popular system of county government, local option, and free schools; and, in the following year, the Federation passed a set of resolutions known as "the Nottingham programme", which included Home Rule, one man one

vote, free education, reform of the land laws, disestablishment of the Church in Wales, and labourers' allotments. The leaders of the party tried discreetly to protest against these resolutions being treated as a party programme.

Francis Schnadhorst, the capable organizer chosen by Chamberlain to develop his scheme, was the first secretary of the National Liberal Federation. In 1887 he also became honorary secretary of the Central Liberal Association. The virtual fusion of the Federation staff with the Central Office of the party, which thus took place, seriously limited the capacity of the Federation to control the policy of the party. The Central Office ensured that the Federation did not press any proposals of which the party leaders did not approve. In 1891, for instance, the Federation was anxious to have the question of an eight-hour day brought forward; but they were discouraged by the *Central Office, since the leaders did not wish to show their hands on this subject.*

It began to be obvious that, if the influence of the Federation was to be kept within the limits desired by the party leaders, it would be necessary that the arrangements for the meetings of the Federation should be carefully prepared by the officials of the Central Association. It was pointed out by Schnadhorst, at the time of the historic meeting at Newcastle in 1891, as well as on subsequent occasions, that delegates attended, not to express opinions, but to hear what measures the leader of the party could adopt with a reasonable hope of maintaining a united party. As Schnadhorst remarked, it would be impossible for three thousand delegates to enter upon a discussion of fresh principles.

At this meeting at Newcastle (which culminated in a speech by Gladstone), the "Newcastle programme" was adopted, comprising such diverse points as Home Rule, the disestablishment of the Welsh and Scottish churches, local veto on sale of intoxicants, one man one vote, parish councils, and employers' liability. This catalogue—a typical product of popular influence on the construction of a party programme—was a heavy burden round the neck of the Liberal party for some years to come. It was too extreme in one direction for some, and in another direction for others. The result was division of interest and consequent failure of unity and enthusiasm. The Ministry, which accepted the heads of the programme in general terms, made some show of introducing legislation to fulfil the pledge; but little progress was made; and it was found necessary to throw



the blame of obstruction on the House of Lords in order to quiet criticism from the local associations. The history of the Newcastle programme has had the effect of discouraging a repetition of this feature in the decentralization of party management. After the further lessons which were learnt in the election of 1895, the Liberal Central Office was given larger authority; and the power of local associations diminished in corresponding degree.

In recent years the Liberal party organization has been subjected to revision. The National Liberal Federation still acts as a useful co-ordinator of the activities of the local associations; but the shaping of party policy and the big schemes for propaganda are in the hands of the Central Office, or, more accurately speaking, in the hands of the Organization Committee.

It was soon discovered by the Conservatives that the intensive methods invented by Chamberlain were so effective that no party could afford to neglect them. The Conservative local associations were reorganized, and the Federation of Conservative Associations adopted many of the devices of the so-called caucus. In the Conservative party also, the development of the influence of these associations through their Federation was restrained by the close connexion between the Federation and the Central Office. The appointment of Gorst, as both honorary secretary of the National Union and as head of the Central Office, started a precedent which proved no less prejudicial to the activities of the Conservative Federation than the conjunction of the two offices in one person did for the Liberals. The delegates of the local Conservative associations were, in effect, prevented by the officials of the Central Office, which was under the control of the party leaders, from embarking on proposals likely to prove embarrassing. But it was not so necessary for the Central Office to prepare the ground for the Conservative Federation meetings as for those of the Liberals, since the resolutions passed were not regarded as having a close connexion with the construction of the official party programme.

The union in one person of the two principal administrative offices of the Conservative Federation and of the Central Office, which had worked without friction between 1886 and 1903, proved a source of dissension immediately after the latter date. After the serious reverses experienced by the Conservative party in 1906 and 1910, steps were taken to separate the two staffs, and yet to secure co-operation; but a large measure of control was retained by the

Central Office. At the present time, the chief powers of the local associations, acting through the executive committees of provincial areas, are (1) to advise the Chairman of the Party Organization, (2) to keep the Executive Committee of the National Union in touch with the needs of the constituencies, and (3) to obtain and transmit to head-quarters local views on public questions, with the special object of assisting the work of the Executive Committee of the National Union. Though there have been of late signs of reaction against the impotence of the local associations and their Federation, it seems likely that any development towards decentralization will only be temporary.

The written constitution of the Labour party has the advantages, as well as the drawbacks, of being unhampered by the traditions of more slowly evolved organizations. Under its terms, the delegates at the annual party conference are entitled to decide from time to time "what specific proposals of legislative, financial or administrative reform shall be included in the Party Programme". Thereafter, the National Executive Committee (a body of twenty-four members, elected by the Party Conference) and the Executive Committee of the Parliamentary Labour Party decide which items of the Programme shall be included in the general election manifesto of the party. They also define the attitude of the party to issues raised by other parties. The Central Office is, unlike those of the Conservatives and the Liberals, subject to outside control, namely, that of the National Executive Committee. U5612 H8 53142

Owing to the nature of its composition, the proceedings of the Labour Party Conference are restricted in a similar manner to the proceedings of other party conferences. Constructive business cannot be expected; and the best that can be done by the delegates is to discuss policy in general terms and to express aspirations. On one occasion Mr. Ramsay MacDonald objected to being tied down by the Party Conference to a specific programme. Of necessity the real administration and direction of the party rests in the main with the National Executive Committee and the Central Office. But the delegates in the Labour Party Conference, as in other parties, require reasonable respect to be paid to their views; and any manifestation of excessive centralization which fails to meet these susceptibilities is open to suspicion.

Express provision is made in the Labour Party Constitution that the National Executive Committee shall co-operate with the local

associations in the selection of candidates; and candidates thus selected must be approved by the National Executive Committee and must adopt the principles of the party manifesto. Furthermore, Labour members, when elected, are required by the Constitution to subject themselves to party discipline. These provisions are more explicit than any adopted by the other parties; but the practice of the Conservatives and Liberals, in regard to the conduct of candidates who are nominated and financed by the Central Office, if less openly admitted, is not much less exacting than that of the Labour Party."

As a result of the growth of party organizations, both central and local, during the last half-century, each party now possesses a machine of vast potentiality. In the first stages of this development, the creation of local associations was more notable than the increase in the power of the Central Offices. Latterly, the opposite has been the case. Yet at no stage has there been any real prospect that the extension of local party organization would give the constituencies a commensurate accession of power. The party machinery has provided efficient channels of communication between head-quarters and the country; but the traffic in these channels has been chiefly from the centre to the circumference. They have been much more utilized for the exertion of the influence of the central organization and the party leaders than as a means for the communication of the ideas of the local associations to head-quarters. The influence of the constituencies, the rank and file, on the Central Offices has been singularly small. It might have been anticipated that federations of local associations would have enabled them to enforce their views on the leaders, if not in respect of party administration, at least in respect of election issues. But, owing largely to the absence of independence of the federation staffs and to the tendency towards concentration of power in the hands of leaders at head-quarters, the local associations have been deprived of much of their possible range of influence. The increase in the numbers of the electorate in recent years has also diminished the representative quality of local associations and consequently reduced their authority.

It does not follow, however, that this course of development has been detrimental to the real interests of the people. The provision of means of communication between the Central Offices and the constituencies, with the ability of the Central Offices to dictate

<sup>12</sup>A number of Conservative local associations retain independence in the nomination of candidates; and consequently the ability of the Central Office to maintain a general direction of election campaigns is impaired.

election programmes to candidates, has led to the official definition and thus to the uniformity of the questions to be put to the electorate. It has been possible for one question or set of questions to be put instead of a confusing variety of questions. The history of the New castle programme is sufficient illustration of the disadvantages of undue initiative on the part of local associations. The people's voice has spoken with less freedom than it would if greater control over the party organizations had been obtained by them; but it has spoken with less ambiguity.

It is, of course, permissible to argue that it would be better for the people to give a doubtful answer to questions of their own asking than a clear answer to questions in which their interest has not been consulted. There is an obvious temptation to politicians to select issues from the point of view of expediency. They can force issues to the front which they anticipate will bring them into power regardless of their intrinsic worth. They can shelve issues that require decision and action, if they appear to involve exclusion from office. It is sometimes alleged that important measures of reform, respecting for instance, such matters as divorce, although probably favoured by a large majority of voters, are left in the impotent hands of private members because no party finds them worth undertaking. Party managers are afraid that the inclusion in the party programme of proposals which cut across party divisions may endanger existing allegiances. This is certainly true; but it seems to be one of the inevitable drawbacks to the working of the party system as understood to-day. Nevertheless, non-party measures do from time to time receive the consideration of Parliament; and, on these occasions, the Whips allow members to vote in accordance with their independent opinions.

Objections to the strict discipline imposed by all parties on their members in the House of Commons are obvious; but it must be remembered that, the surer the solidarity of a party, the better it is able to carry out its pledges. Undertakings can be given to the people at general elections with a greater sense of responsibility and are capable of being performed with a greater fidelity if the leaders know that their supposed adherents will stand by them. It is only with a large measure of collaboration between members within their parties that parties can be instruments of democratic government.

### III

WILLIAM CLARKE

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#### *The Decline in English Liberalism\**

THE general election in England has come and gone without producing brighter results for the Liberal party. It is true that the election was sprung upon the country, but the results would not have been essentially different, had this not been the case. Scores of seats were uncontested by the Liberals, indicating an apathy and a helpless feeling almost unknown before. During a period of fifteen years three general elections with overwhelming majorities have gone to the so-called Unionist party, but only one with a tiny majority to the Liberal party. How is such a phenomenon to be explained?

Within the inside circles of Liberalism one hears much of personal issues, but no sweeping results are to be explained thus. I do not suggest that these personal quarrels have nothing to do with the demoralized condition of the party, but they have merely accentuated a state of chaos already existing. We must go deep in searching for causes of political disaster, and we must try to eliminate personalities, as far as can well be, and look to large and far-reaching influences. I venture to submit an explanation of the Liberal collapse which, though at first sight it may seem paradoxical, will be found to meet the requirements of a sound hypothesis by explaining the facts.

The Liberal party, then, has gone under because of its remarkable success. It has, in the main, carried out the program which it set itself to carry out. Moreover, so complete has been its achievement that its opponents have aided it to do its task and have appropriated most of its work. The willingness of the English Conservative party to adopt what has become inevitable and to bow before the accomplished fact stands out in a conspicuous manner, as compared with the methods of French conservatism, which, after making ineffectual

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protests, retires to its rural chateaux and to the Faubourg St. Germain and keeps up a semi-treasonable agitation against the government and the new laws demanded by public opinion. The English Conservative, on the contrary, accepts the new conditions and pretends that he was always in favor of them. In this fact will be found, I venture to think, the chief cause of the decline of the English Liberal party.

This process, first definitely conceived and systematically carried out by Disraeli, was begun by Wellington and Peel in the year 1828, in connection with Catholic Emancipation. The Whigs had been honorably and consistently identified with the Catholic cause. So, too, had Pitt, who was dismissed by George III because he was faithful to the promise he had given at the destruction of the Irish Parliament, that the Act of Union should involve the full liberation of the Catholic population. But the later Tories, who commended themselves to the king and the regent, were the representatives of an insane bigotry, and under their rule the Catholic cause stood no chance. It was only when O'Connell had become the uncrowned king of Ireland and resistance to reform was dangerous in the extreme that Wellington and Peel surrendered. They simply thought they were acting as peacemakers, and so they were. But they were also beginning that process of undermining Liberalism by appropriating its principles which has continued to our own day.

Two years after came the great movement for Parliamentary reform. It seemed at first as if a purely adverse and reactionary attitude would be taken up by the Tory party. Wellington, Inglis, Croker, Twiss resembled, each in his way, French reactionaries, rather than the complacent Conservatives with whom we have become acquainted in later times. But, as usual in England, a convenient compromise was arranged to which the king was a party, and, as soon as the reformed Parliament met, the Tory party was as ready for the conversion of the new voters to the Tory creed as if no such thing as reform had ever been heard of. Here was act two in the political drama. First, religious liberty had been admitted, now Parliamentary reform was accepted by Toryism. Dr. Johnson spoke with scorn of the "bottomless Whigs" of his day. What would he have said of the degenerate condition of the fine old crusted Toryism, of which he was the greatest champion of his time? Yet, had not Toryism given way, it would have been a dead creed.

Within nine years of the passing of the Reform Act, Toryism had become so strong that it swept the country, and the Peel ministry of

1841 came in with a huge majority. Devoted by ties of both sentiment and interest to the landlords of England, the Peel ministry represented the high protectionist element, as opposed to the new free-trade doctrines which Cobden, with a persuasive logic never surpassed in England, was pressing on the mind of the country. A superficial observer would have imagined that Peel and his cohorts were so much in the ascendant that the Corn Laws would stand. But, as soon as economic pressure in the form of the Irish famine acted on the Tory party, Peel instantly threw up the sponge, decreed the death of protectionism and accepted the whole body of free-trade economic doctrine. It is true that, for a time, he split up the Tory party, but the protectionist wing made no headway and died out in a few years.

Here, again, another great Liberal reform was actually carried by the Tory party, and that a reform far more deadly to Tory interests of the most obvious character than either parliamentary reform or religious status. It is true that the official Whigs under Melbourne and Russell were hardly less friendly to free trade than was the Tory party. The free-trade movement was made up of a *nouvelle couche sociale*, differentiated alike from Whig and Tory. All the more remarkable its triumph; all the more significant the abdication of the Tory party, and its acceptance of this economic principle of advanced Liberalism. It was the most striking political English capitulation of the century, as far-sighted Tories saw.

In the year 1853 Mr. Gladstone, as chancellor of the exchequer in the Peelite ministry of Lord Aberdeen, produced and carried a budget of an almost revolutionary character. The collapse of protection had rendered new financial methods necessary, and that budget was Mr. Gladstone's most signal achievement. It contained provisions disagreeable to the Tory party and was much criticised. But it became law, and the finance so established was never contested until the new high imperialism necessitated new and very doubtful methods, under whose depressing influence English consols have declined in value some sixteen points in about two years. The alarms and excursions which are connected with the name of Palmerston belong to this period, and he so hypnotized the Liberal party that it became like its opponents. So, in the era from 1855 to 1865 we find a surrender of the Liberal party to the Tories and an acceptance of Tory methods and principles, rather than the surrender of Toryism to the inevitable Liberal advance.

As soon, however, as Palmerston passed away, the Liberals girt

themselves for a new struggle on the old battle-ground of parliamentary reform. Again the old phenomenon appeared. The Russell-Gladstone bill for a slight extension of the suffrage having been defeated by a small majority, Disraeli instantly seized the opportunity to "steal the clothes of the Whigs while they were bathing." He first introduced a "fancy franchise" bill; but when it was thrown out, he at once brought forward a much more comprehensive measure than that of Mr. Gladstone, conferring a vote on every householder in the land. Again Toryism took the sails out of the hands of Liberalism; again a great Liberal reform was appropriated by the party which had but a short while before been hostile to all reform. The present Lord Salisbury declared that it was a violation of principle; and so it was. But it helped to stave off revolution; it kept the party system going, while making it more of a sham; and it converted Lord Salisbury himself to the opinion that it was useless any longer to attempt to "stem the torrent of democracy."

The Tory party could do nothing against the great reforms initiated by the first and best ministry of Mr. Gladstone, that of 1868-1873. Spite of a vigorous agitation in behalf of the State Church of Ireland, its disestablishment was carried, Queen Victoria, it is said, mediating between the two parties for generous terms for the clergy. The ballot, the new system of public primary education, the new army system and other reforms were made good. But the point is that, save as regards the educational system, the Tories accepted all these reforms, and so Toryism and Liberalism became less and less divided. "We have secured all that we want," said in effect thousands of the well-to-do class which in former days had been Liberal; "now it is time to rest and be quiet. We shall either cease to take a prominent part in Liberalism, or we shall go over to the new Conservatism, which has ceased to be persecuting and stupid and has become moderate and the friend of property, respectability and the older Liberal attitude."

This tendency of moderate people was confirmed by the newer development of the labor movement. I am somewhat anticipating, but even in the earlier seventies there were not wanting signs of the new spirit in the English labor movement. The trade unions were completely emancipated, and the strikes, the energetic speeches of labor men and the claims put forward were all abhorrent to the *bourgeois* who had been a Liberal, but who now saw his modest fortune threatened by men of a lower social stratum. The International was then a formidable power, or at least was supposed to be,



and it had begun its career in London and under the auspices of Englishmen. The distrust and suspicion excited by the trend of affairs in the labor world helped to swell the Tory majority of 1874, the year in which the stampede from Liberalism first became manifest.

But another surrender of Toryism was destined to occur. During the Disraeli premiership the chief subject agitated before Mr. Gladstone began his Bulgarian campaign was the extension of the suffrage to the rural laborers, who had been left out of the measure of 1867. Even a few of the Liberals did not like this project, which was opposed by the present Duke of Devonshire, then nominally leader of the Liberal party. As for the Tory party, it was against the project. But the year 1884 came and the measure was carried with the aid of the Tory party, the redistribution of seats involved being settled by an arrangement between leading representatives of both parties. Thus again had Toryism capitulated. Thus again had Liberalism been deprived of a rallying cry, and therefore of one more reason for existence. The differences between the two parties had now been reduced to so narrow a line of demarcation that it was hard to tell in what Liberalism and Toryism respectively consisted. Under such conditions the elections of 1885 were fought. The Liberal party was divided, and hence weakened; the Tories had no proposals; and it was not wonderful, therefore, under such circumstances,—with a new electorate, with a Gladstone wing and a Chamberlain wing, with the Liberals discredited in their foreign policy and the Irish in deadly hostility,—that the election should show no clear result.

Thus the close of 1885 found the old Liberal program and the old Liberal party largely exhausted. This condition of things (proved by the meagre Liberal items of reform set before the country by the Liberal leader) led to two results. First, a considerable section of the Liberal party began to think of leaving it. Secondly, Mr. Gladstone, when he discovered that the elections yielded no issue, commenced to turn his attention to a new issue which he was soon in a position to force on the party—the issue of Irish Home Rule. As soon as he opened up the question and showed that he had been converted to the Home Rule cause, the wavering Whigs grasped at the excuse for leaving a party with which they had little sympathy, and in whose future they did not believe. Thus the split of 1886 was inevitable, growing out of the political conditions which obtained in England—namely, the exhaustion of the Liberal party and the consequent ending for a time of real party divergencies, as they had existed when the

words "Tory" and "Whig" or "Liberal" represented a living reality.

In other countries, it may be pointed out, a similar state of things obtained. But in these countries parliamentary groups of a more or less definite character arose. In England the Liberal party would not admit its true condition; nay, it does not yet admit it. It pretends to be a united party holding a common creed. So long as Mr. Gladstone was leader of the party, differences were concealed behind his colossal form. But as soon as he retired, these differences at once broke out, and now they stand so obvious before the people that it is no wonder the electorate does not dream of placing the Liberal party in office. Apart from personal quarrels,—with which, as I have said, we have nothing to do here,—these differences concern foreign and colonial politics, and what is generally called the question of militant imperialism. The accession of Lord Rosebery to office in 1894 brought these questions at once to a head.

It is not my purpose to review the history of the unfortunate Rosebery ministry or the conduct of Lord Rosebery since, still less the story of the Salisbury ministry, with its wars and rumors of wars. I wish now to point out the singular remedy offered to the Liberals, in order to restore them to health and strength. Just as Liberalism permeated the Tory party, and as the Tories accepted all the chief results of Liberal reform and seemed to thrive upon this strange diet, so now it is suggested that, were the Liberal party to take to the Tory diet, it might recover its energies and be once more robust and full of life. In other words, the Liberal party is recommended to take a deep draught of imperialism and so beat the Tories on their own ground, just as the Tories have taken up reform and beaten the Liberals on their own ground. It is assumed that imperialism is inevitable, that it is a final product, if not of human wisdom, at least of practical necessity. There is really no theory of imperialism in England, as there is in Russia or Germany. It is all hand-to-mouth, designed for the moment, altered from time to time to suit convenience. Based as it is on two facts,—trade necessity, or supposed necessity, and the racial feeling which leads such a colony as New Zealand to join in the South African war,—imperialism in England perhaps has no need of that intellectual defense which one finds for *Weltpolitik* in Germany. Such as it is, it is the dominant factor in English politics to-day, and there would seem to be on superficial grounds something to be said for the notion that, were the Liberal party to take up imperialism actively and aggressively, it might in a

few years supersede the Tory party by gaining once more English confidence. Yet I am persuaded that there is no greater delusion.

There is, in the first place, a vital difference between Toryism and Liberalism. The latter must advance; the former has only to defend and accept whatever is inevitable. While it has been necessary and politic for the Tory party to accept all the various reforms to which I have referred, it does not follow that it would be well for the Liberals to reciprocate this action. The Liberal role is essentially different. For the Liberal party to take up the defense of certain interests because they are powerful or for the moment popular, would be for the Liberal party to abdicate its function of attack and initiative. It is for this reason that the party must, at the risk of losing many votes, attack the huge vested drink interest and initiate reforms in education and local government. As well might a man cease to walk and think he could retain the use of his limbs as the Liberals abstain from their function of attack and initiative and hope to maintain political vitality. The party must be aggressive or cease to exist. The Tories need not do this; they are only expected to defend the *status quo* and to accept what has been positively accomplished.

There is, therefore, no *prima facie* case for supposing that, because the Tory party has attached itself firmly to the cause of high imperialism, it would do the Liberal party any good to attach itself also to that cause for the purpose of making political capital. The business of the Liberal party is not to follow the Tory, though it is the business of the Tory party to follow the Liberal. Besides, as Mr. John Morley said in a very powerful speech at Oxford, if the electorate desires imperialism, it will infallibly go to the Tories for it, and no specious special pleading on the part of the Liberals will be able to turn votes on that issue. Consequently, from the electoral point of view, the adoption of a strong imperialism would be a most mistaken policy for the Liberal party. Recent history confirms this theory. Mr. Gladstone was led in 1882 into a policy of imperialism in Egypt from which he shrank. Whether he was right or wrong in his policy of intervention, I do not say. What is certain is that that policy shattered his ministry and his party. The imperialistic policy of Lord Rosebery during his short term of the premiership left him with a party weaker than any English party has been during the present century.

Now this can be no mere accident. If the adoption of the Tory policy of imperialism is disastrous for Liberals, there is some reason for the fact. By imperialism, it will be understood, I do not mean the

discharge of absolutely needful duties in regions *de facto* under British sway and for which the British authorities are responsible. I assume that no party at present would argue for neglect of obvious duty, however many Liberals, like Grafton in the eighteenth century and Bright in the nineteenth, deeply regretted the annexation of India. What I mean by imperialism is, first, the repeated annexation of territories during the last few years, mainly in Africa, and, second, the justification of such annexations on commercial, political and moral or quasi-moral grounds. It is not to be wondered at that such a policy should have approved itself to the Tory party. For, in the first place, it provides numerous posts, both civil and military, for the people connected with the party. Secondly, it assures activity in the speculative markets,—one might say the gambling markets,—such as the “Kaffir Circus.” Thirdly, it ensures the perpetuation of Tory doctrines at home, through the military men and civilians who hold the offices in the dependencies. For these, on retirement from active service, come to England and take part in politics, local and national, and their training in arbitrary and practically irresponsible rule fits them for active work on the side of class interests and Toryism.

Imperialism, therefore, is a paying business for the Tory. But for the Liberal who believes in the ground principles of Liberalism, it is deadly. Every extension of the Empire means more class feeling at home, more of the Anglo-Indian feeling, less of the old humane ideas of Fox, Mill and Cobden. I am not bringing, it will be understood, any sweeping charges against the imperial official or military class; I am merely contending for the indubitable fact that the extension of that class is fatal to what we have known as Liberalism. If this is so, then it follows that it cannot pay the Liberal party to vie with its opponents in the cult of imperialism. Liberalism, by so doing, would defeat its own ends. The end of Toryism is only the preservation of the *status quo*, however that may have been reached. But the end of Liberalism is a certain ideal of public life, which is incompatible with the sway of the official or soldier whose life has been spent in ruling other people against their will, or at least without consulting that will. When Liberalism admits, as a political theory, that people are to be ruled forever on such a basis, it has practically ceased to exist, and can only be what Disraeli said the old Tory party was, an organized hypocrisy. So it becomes clear that Liberalism cannot rejuvenate itself by borrowing from the imperialism of its opponents. In the next place, even the strongest imperialist will admit that

his ideal may conceivably be carried too far. To every one, but a mere fanatic the Greek idea of poise or balance in the state must always present itself as attractive and necessary. The most thorough-going Radical will, in his calm moments, admit the need of a Conservative opposition, as will the Conservative the need of a Radical opposition. The candid Socialist will be glad of a dash of Anarchism in his otherwise too rigid commonwealth. The imperialist, whose policy has brought about an immense increase of naval and military expenditure in England and a not very enviable state of things in South Africa, may well argue for the show at least of a different theory and practice, and may therefore contend with perfect sincerity for an anti-imperialist party, as being his true critics and opponents. If the other party is to take exactly the same line as your own, where will you get that criticism which every sane man must see is essential for the life of a free state? If both Liberal and Tory parties in England were to become imperialist in precisely the same degree, if the main ideas of the so-called Liberal imperialists were to be adopted by the Liberal party as a whole, no greater condition of danger for the country could be imagined. So far as foreign policy is concerned, serious criticism and opposition to possibly disastrous courses would cease to exist.

The English constitution consists in essence of party government, and it will undergo a revolution when party government is no more. It may not be a good system; from the point of view of logic and the reason it is not. But such as it is, it is there. Those who counsel the Liberal party to take up imperialism as the Tory party has taken it up, no matter what may be their intentions, are undermining the constitution. Nothing is more absurd than to say that you can all be of one mind in foreign relations and yet divide into parties in regard to domestic affairs. What are domestic affairs? Is finance? Surely. Yet finance is far more affected by foreign policy than by any home matters. English taxation is going steadily up; English reserve capital is going steadily down. How can it be pretended that this has nothing to do with imperialism, when every one knows that it is imperialism which has brought this about? How can the imperialist who approves the diplomatic and war policy quarrel with the financial result? *Inter arma silent leges*. How can the imperialist who knows that you cannot attend to more than one thing at a time complain at the entire neglect of the reforms at home which he professed to desire? He has chosen his lot, and he must be content. A Liberal, of all men, wishes to see the necessities of life cheap for the masses. But the first out-

come of imperialism, with its wars for empire, is to raise the price of the leading commodities of life; and with what reason shall he who supported this policy grumble at the inevitable consequences?

There is no real distinction between foreign and home questions, as imperialists pretend. They are all of a piece. Aristotle, who favored a vigorous domestic policy of state regulation, in order to produce an economic poise or balance in the commonwealth, also warned the ruler against aggressive foreign policy. He was right. You cannot separate the two. England can have the old policy of half a century ago, the policy of Cobden, of which peace was but a part, being connected with retrenchment and reform; she can have the policy of Mr. Chamberlain, with its "pegging out claims for posterity"; but she cannot have both at the same time. It is well, therefore, that England should have the two parties which represent these different ideals; but it is assuredly not well that one party should try to amalgamate with the other in foreign politics, while pretending to fight it in home affairs. Nay, it is impossible. Were the Liberal party to become imperialist in the full sense of the term, it would perish and another party would rise to take its place—and this would happen in the very nature of things. As Mr. Morley said at Oxford, the Socialists would step in to take the place of the real Liberal opposition, as has been the case both in Germany and in Belgium.

What is needed in party government is a real issue running through from top to bottom in public life—an issue which cannot be ignored or evaded; and it is exactly for lack of such an issue that the Liberal party in England is so crippled, so faint, so resourceless at this hour. It has for years ceased to live by principle. In Mr. Gladstone's later years it lived on a personality. Since he passed away it has not had even that to fall back on. Bankrupt of ideas; looking now this way, now that, for some means of help; afraid to utter anything which will be likely to rouse the ire of that master of the situation, "the average man;" with no intellectual basis, with no belief in its own fundamental creed, the Liberal party is but a sorry spectacle to-day. But there is one chance for it, and that chance lies in a course precisely opposite to that criticised here. Let the party take up a clear line of thought and action against the dominant imperialism of the hour, and it will revive. Many who will not quite agree with it will nevertheless welcome such an attitude, as giving a check to a tendency which is certainly full of risks and which may become highly dangerous. The Liberal domestic program is at present a mere tissue

of words, and must remain so till the fever of imperialism has run its course. Therefore the Liberal party can do nothing in that sphere. But it can hold up to the nation some other political ideal than that which is now dominant; and if the arguments presented here are valid, it is not only its duty but also its interest to do so.

## IV

J. K. POLLOCK

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### *British Party Organization*\*<sup>1</sup>

N EARLY thirty years have passed since Ostrogorski produced his penetrating and pioneer work on party organization. But as a well-known and experienced American writer has recently observed: "There is singularly little up-to-date and really informing literature on the general subject of party organization in Britain."<sup>2</sup> Surely this lack of attention to such a vital field of politics is not due to a paucity of developments, for in the last quarter of a century British party organization has seen almost as important and far-reaching changes as Ostrogorski described for the last quarter of the nineteenth century. But writers on British political parties have given most of their time to a consideration of programs and policies, to personalities, and to a rather mechanical although not complete description of the national and local party organizations. Considerable space has been devoted to the framework of the National Union or Federation of the party, while a sentence or two has sufficed to mention the Central Office. Consequently, our general knowledge of British party organization does not extend much beyond what was known at the opening of the century. To be sure, the growth and development of the Labour Party has been quite adequately treated by recent writers, and its organization quite satisfactorily portrayed. But the significant changes in the organization of the two older parties and the general tendencies of party organization in Britain remain to be discussed. Likewise party organization in Parliament has been well treated and is generally

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<sup>1</sup> I am greatly indebted to several of the important persons in the British party organizations for assistance in the preparation of this paper and I especially wish to express my appreciation to Mr. Philip G. Cambray and to Mr. H. F. Oldman.

<sup>2</sup> F. A. Ogg, *English Government and Politics*, p. 594, note.



understood, but only sly glances have been cast at the focal points of British party control.

It is the purpose of this paper, therefore, to portray how party organization in Britain outside of Parliament has developed in a quarter of a century, and the effect these changes have had and will probably have on English political life. Inasmuch as the structure of local party organization has not undergone any significant changes during this period,<sup>2</sup> attention will be given principally to the central part of the organizations, and to the general organization developments. Only the briefest discussion can now be attempted, for lack of both time and ability, to mention but two handicaps, prevent the writer from producing a third volume of Ostrogorski. Few authorities can be cited because one is forced, in treating such a subject as party organization, to rely upon direct personal observation and inquiry.<sup>3</sup>

What have been the principal developments in British party organization since 1902? Immediately one can say that there has been a tremendous growth in the size of the organization. Since Ostrogorski and Lowell wrote their significant books there have been two large extensions of the franchise, until today Britain enjoys universal suffrage. A doubling of the electorate in twenty-five years is bound to make party organization expand. And furthermore, with a larger electorate, party organization becomes much more important. Where there are millions of voters the mechanization of politics seems to be inevitable, and the organization counts for more, the individual for less. The expansion of party activity as well as the enlargement of the electorate has also necessitated a great growth of party organization. To keep this larger organization running, more political workers are required, and the estimate made by Ostrogorski that the professional politicians "would hardly reach the figures of 2,000 for the whole of England, with Scotland and Wales,"<sup>4</sup> must be more than doubled today.

Next, and more significant, there has been a growth in the size and importance of the Central Office. Ostrogorski pointed out the influence of the Central Office even though it was a small affair

<sup>2</sup> Local party organization has of course been affected by the development of the junior movement and by the extension of the franchise to women. The organization is now bisexual and youthful as well as adult.

<sup>3</sup> I have spent several months of each of the last three years in England observing political parties and electoral methods.

<sup>4</sup> M. Ostrogorski, *Democracy and the Organization of Political Parties*, vol. I, p. 593.

when he wrote. But today the Central Office is the keystone in the whole party organization. It is the focal point of party control, and its activities extend to every phase of party life. More and more does the whole party turn to the Central Office for guidance. Writing as late as 1911, a *Times* correspondent described the physical appearance of the Unionist Central Office: "One mounts a squalid staircase," he said, "and is shown into a small and uncomfortable waiting room which a railway company would despise."<sup>6</sup> Such a description would not fit the large and elaborately equipped offices which now house the Central Offices of all three parties. The very physical change bespeaks the other changes which have taken place.

Gradually the Central Office has assumed the tasks which must be performed to win elections and keep the party functioning. The National Union of Conservative and Unionist Associations which was founded in 1867 was originally intended to stimulate and direct the organizing movement in the country. The National Liberal Federation established in 1877 considered itself to be the policy-determining agency of the party. But gradually, and since 1900 more rapidly, both of these associations have become more and more unimportant and their work has been assumed by the Central Offices. One cannot say today that "the business of the Union is the winning of elections," nor that "its own function is really that of an electioneering body." Today the Union takes no part in elections and the local associations do not legally exist during an election. They are dissolved as soon as the election begins and are not revived until the election is over. The secretary of the National Union does not even occupy his regular office at the Central Office during an election because there is no National Union work for him to do. All electioneering work is done by the Central Office and its subordinates in the constituencies, rather than by the Union. The same is true of the National Liberal Federation. It is not "a very active and influential agency for the administration of party machinery." It is merely the ruffle of the party, the parsley around the ham, so to speak, and it does not now bother itself with handling elections. It is almost entirely concerned with policy.

In the Labour Party, where the Annual Conference really amounts

<sup>6</sup> *The Times*, January 30, 1911.

<sup>7</sup> This is done to avoid any possible violations of the Corrupt Practices Act which would invalidate the election. The point has not been raised in a petition and some authorities think that the court would look behind the fiction. But the practice of dissolving the associations is indulged in nevertheless.

to something, the Central Office is the most important unit in the party machinery. Unlike the Liberal and Conservative Central Offices, the Labour Central Office is controlled from outside, namely, by the National Executive elected at the party conference; and the control is real, not merely nominal. But in studying the Labour Party organization one should give the most attention to its Central Office and to the National Executive. At the latest party conference time was used for educative speeches and the important decisions were left to the National Executive.\* Perhaps this is merely indicative of the development which the Labour Party organization will have. If it is, this newer party will merely be going the way of the two older parties—it will be concentrating control within the machine, and not in the rank and file. After all, it is very difficult for a convention to combine the functions of discussion and control.

In the matter of candidatures the Central Offices have control. The Labour Party in its constitution requires that before any parliamentary candidate can be regarded as finally adopted for a constituency as a candidate of the Labour Party, his candidature must be sanctioned by the National Executive.<sup>†</sup> This requirement goes farther than that of either of the two other parties but the practice is quite the same in all parties. A Tory who is *persona non grata* is not likely to be nominated against the objection of the Central Office, and in normal times the same has been true of the Liberals. As the number of candidates fighting forlorn hopes has increased, the Central Offices of the two older parties have increased their power. Obviously when the Central Office has suggested the candidate, provided the funds, and determined the policy of the campaign in the constituency, it is likely to control the candidate. One must remember, however, that in the selection of Liberal and Conservative candidates, constituency organizations, especially those which have sufficient funds to meet their own expenses, frequently maintain considerable independence. Even then, the candidates are expected to accept the policy of the leader of the party. This is formally required by the Labour Party's constitution: "At any general election they (the candidates) shall include in their election addresses and give prominence in their campaigns to the issues for that election as defined by the National Executive Committee in its manifesto."<sup>‡</sup> There has thus been a

\* See *The Observer*, October 6, 1929, p. 11.

† *The Constitution of The Labour Party*, clause ix, section 3.

‡ *Ibid.*, clause ix, section 5.

general gravitation toward the Central Offices of power over candidatures, and to an even greater extent of control over the policies and programs of the candidates after they have been selected.

One can go a stage further and say that the M.P. when elected is expected to support in Parliament the policies of the party as laid down by the leaders. In this respect too, the Labour Party makes a strict regulation: "If they (the candidates) are elected they shall act in harmony with the constitution and standing orders of the party in seeking to discharge the responsibilities established by parliamentary practice."<sup>11</sup> And "it shall be the duty of every parliamentary representative of the party to be guided by the decisions of such parliamentary representatives, with a view to giving effect to the decisions of the party conference as to the general programme of the party."<sup>12</sup> In other words, Labour M.P.'s must follow the decision of the caucus whether they agree with it or not. The Liberals and Conservatives do not write a similar regulation into their party constitutions, but in practice the M.P.'s of these two parties are just as regular as are the Labour members. Party discipline in the Commons has been strong for fifty years, but it has never been stronger than at present. Members file through the division lobbies like so many school children, and the independent is almost nonexistent. This strict party voting has its undoubted advantages, but the point here is that the strength of the party organization has increased until party regularity in the Commons is nearly one hundred per cent perfect.

In another way the Central Offices have extended and consolidated their power. Large staffs of trained Central Office workers are continually covering the country in systematic fashion performing the multitudinous tasks which a good party organization must perform.<sup>13</sup> There are also provincial branches of the Conservative Central Office, for example, which really head up all the local party work. These provincial offices are not mere clearing houses of information. They assist with candidatures, with literature, with speakers, with money, and they exercise great control over the constituency organizations within their areas. Hundreds of full-time, paid workers, usually the most experienced ones, those who have proved unusually successful in local constituency affairs, are selected to do this work and they do it under Central Office guidance.

<sup>11</sup> *Ibid.*, clause ix, section 8.

<sup>12</sup> Article 4 c of the constitution adopted in 1918. This particular clause was left out in the revision of 1929.

<sup>13</sup> See the *Annual Reports* of the Labour Party for instance.

The importance of the Central Office is demonstrated in another way. In 1903 when Ostrogorski wrote about the Tory Central Office it had about twelve employees. Today the Central Office personnel of that party numbers around two hundred and fifty persons and its annual expenditures, not including any general election expenditures which might be necessary, amount to at least half a million dollars! The Liberal Party and the Labour Party are not so well provided, but their Central Office staffs have more than quadrupled in a quarter of a century.<sup>11</sup>

Sufficient evidence should now be at hand to demonstrate that the Central Office really is the party organization, and that the large federations of constituency organizations have ceased to play an important part in the party mechanism.<sup>12</sup> Contrary to certain written accounts, the Central Office is not the child of the big federation, nor has it been established or extended by it. It has grown up despite the opposition of the democratic organization of the party until it has crowded out control by the rank and file. Just as the development of parliamentary government has carried with it the corollary of strong, centralized leadership in the Commons, so has the extension of the suffrage necessitated the concentration in the Central Offices of control over the party organization outside of Parliament. As the Cabinet has grown in power and authority, so have the Central Offices, and the leaders have of necessity come closer and closer to the Central Offices.

The Liberals were the first to realize that duality of control is unwise. They learned their lesson after the election of 1895 and from that time forward they gave increased authority to the Liberal Central Association. Formed in 1860, this body had roots in the constituencies but was in reality a more or less self-perpetuating oligarchy intended to develop strong central control. The leader of the party was President of the Association, and the Chief Whip was Chairman of the

<sup>11</sup> It should be pointed out that the Liberal Party at present is not in a normal condition, and also that the Labour Party gets the full benefit of the organizations of the trade unions.

<sup>12</sup> In the recent annual conferences of the Liberal and Conservative parties there was evidence of a reawakening of interest in the national associations. In the Conservative conference there was serious criticism of the Central Office and of the impotent position of the National Union. A movement is on foot to displace the Chairman of the Party Organization as Chairman of the Executive Committee of the Union so that the Union will have a leader of its own choosing, and the conference put itself on record as favoring this change. For the Liberal conference see *The Liberal Magazine* for November 1929. The Conservative Conference is well reported in the *London Daily Telegraph*, Nov. 22, 1929.

Executive Committee. The Secretary of the National Liberal Federation became Honorary Secretary of the Central Association. During the War, party organization practically ceased to exist, and following the War the Liberals fell on evil days. Today the Liberal Central Association still lives; control of the party organization, however, has passed nominally to the Administrative Committee,<sup>16</sup> but really to the smaller Organization Committee headed by Sir Herbert Samuel, who has been Chairman of the Party Organization since 1927. The National Liberal Federation still has an important function to perform but in no sense can the rank and file of the party as there represented be said to control the party organization. The Central Office headed by the Chairman of the Party Organization runs the party machine.<sup>17</sup>

Up to 1911 the Conservatives allowed the National Union and the Central Office to run side by side. When a general election came along there was duplication and lack of co-ordination, for there were two offices working without consultation. Reports made to the National Union were sometimes not received by the Central Office. When the tariff-reform controversy occurred, the Central Office advocated the leader's policy while the National Union advocated the more advanced policy of the majority of the party. Following the three unsuccessful elections in 1906 and 1910, the Conservatives completely rearranged their party machinery so that today the Central Office is the important cog in the organization. The meetings of the National Union of Conservative and Unionist Associations are important as social affairs but not as meetings to control the party.<sup>18</sup>

Inasmuch as the Labour Party organization has been developed in comparatively recent years, the leaders could set up machinery which was suited to modern needs as well as to the needs of the party. It is indicative of the general trend of party organization in England

<sup>16</sup> The Administrative Committee consists of the Executive Committee of the National Liberal Federation together with nine other persons representing among others the Liberal Parliamentary Party, the Scottish Liberal Federation, the Women's National Liberal Federation, and the League of Young Liberals, forty-four in all.

<sup>17</sup> The offices of the National Liberal Federation are at present separate from those of the Central Office. But the Secretary of the Federation has offices in both places, and in fact does his important work at the Central Office, where he is the subordinate of the Chairman of the Party Organization. Until 1911 the Chief Whip's officials, the Liberal Central Association, and the National Liberal Federation were all housed at 42 Parliament Street.

<sup>18</sup> Following the Conservative defeat in the elections of 1929, the party conference pressed for several changes in the constitution of the Union, among them one to force the leader not to ignore resolutions passed at the annual meetings. See *The Times*, Nov. 22, 1929, p. 19, for the report of the meeting.

to observe that the Labour Party contrived to centralize power in the party without paying too much attention to democratic control. At the recent annual conference of the Labour Party when the new constitution and standing orders were adopted, the National Executive proposed a new type of party member to be known as an associate who would subscribe and be attached to the Central Office." Upon serious objection being raised, the proposal was withdrawn for a year, but the tendency even in this party toward a stronger central organization was indicated by this suggestion of its National Executive. As has been previously observed, however, the Labour Central Office is not a law unto itself, for it is controlled by the National Executive elected at the party conference. But regardless of the control, the Central Office is most important and is becoming more so.

Coincident with the growth in importance and power of the Central Office, and the decline in the control of the National Union and the National Federation, has been the lessening influence of the local constituencies in the control not only of the party but of their own affairs. This is most noticeable in the matter of candidates and in the matter of agents. The Central Office cannot do the local work, but it can lay down the plans and furnish the necessary funds. In fact as the number of local subscribers to the party funds has fallen off, the associations have become more dependent upon the central organizations. The Central Office cannot actually adopt the candidates but it can greatly assist in their choice. The M.P. is elected by his constituency but he is much more the agent of his party than of his constituency. There is an increasing number of small administrative favors for the member of Parliament to perform for his constituents, but he is less and less a free agent so far as his parliamentary votes are concerned. Of course the Central Office is useless without efficient constituency organizations, and effort and money are not spared to keep the roots of the party organization in the constituencies well protected. The Labour Party is still weak as a constituency organization in most places, and its individual membership as opposed to the membership arising out of affiliated organizations is small.

Having in mind now the predominating power of the Central Office, let us observe how its organization has changed in the last two and a half decades. Inasmuch as the details are different for each party, it

<sup>10</sup> See the *Labour Magazine*, vol. VIII, p. 316, for an article on the new constitution and standing orders of the party by G. R. Shepherd, the National Agent.

is necessary to treat the parties separately. Looking at the Conservatives first, we find that up to 1911 their Central Office was nominally under the control of the Chief Whip, with the Principal Agent as the working head. The office of Chief Whip is a rather old one,<sup>20</sup> but that of Principal Agent in the Conservative Party was not created until 1870, when Sir John Gorst was appointed to the post. The Principal Agent in time became the Honorary Secretary of the National Union, thus linking the two organizations. This practice was continued by Captain Middleton, who succeeded Sir John Gorst as Principal Agent in 1885 and who continued until 1903 in this important post. Captain Middleton was in direct touch with the Whip and with the leader of the party and as long as he remained Principal Agent the machine worked smoothly.<sup>21</sup> After a few years under Captain Wells and Colonel Haig, Sir Percival Hughes took the office of Principal Agent and held it until after the reorganization of 1911 had become effective.<sup>22</sup>

By the reorganization of that year, a revolution was worked in the organization of the Conservative Central Office. As the report of the Committee on Reorganization stated: "All executive power as regards organization, literature and speakers should be vested entirely in the central office."<sup>23</sup> But most important of all, a complete divorcement of the Chief Whip from the Conservative Central Office was brought about, and a new post was created to be known as the Chairman of the Party Organization.<sup>24</sup> This person was to be responsible to the leader of the party for the organization of the party outside of Parliament in the same way as the Chief Whip was responsible to the leader for the party organization in Parliament. This was recognition of the fact that the Chief Whip was too occupied with parliamentary duties to pay much attention to the Central Office. He rarely would go to

<sup>20</sup> See M. Ostrogorski, *op. cit.*, vol. I, pp. 137-49. Also the article on the Chief Whip by Viscount Gladstone in the *American Political Science Review*, vol. XXI, pp. 519-29.

<sup>21</sup> A. L. Lowell, *The Government of England*, vol. I, p. 578

<sup>22</sup> The post of Principal Agent has been held successively in the Conservative Party by Sir John Boraston (1912-1921), Sir Malcolm Fraser (1921-1923), Sir Reginald Hall (1923-1924), Sir Herbert Blain (1924-1926), Sir Leigh Mac-lachlan (1926-1928), and now Mr. H. R. Topping.

<sup>23</sup> *The Times*, October 26, 1911.

<sup>24</sup> The first Chairman of the Party Organization was Sir Arthur Steel-Maitland. Following his resignation in 1916, the post was held by Sir George Younger, later Viscount Younger of Leckie, until 1922. Colonel Jackson was Chairman from 1922 until 1926, when he was succeeded by the present Chairman, Mr. J. C. C. Davidson.



the Central Office and the Principal Agent would have to see him at the House of Commons.

Since 1911 then, the Conservative Chief Whip has had nothing to do with the Central Office.<sup>21</sup> The head of the office has been the Chairman of the Party Organization, and in every case the holders of the office have been M.P.'s at the time they held the office. The post has been considered of Cabinet rank. Even in the matter of recommending persons for honors, the Chief Whip at present only prepares that part of the list which suggests M.P.'s.<sup>22</sup> The larger part of the list is prepared by the Chairman of the Party Organization, who also collects most of the money for the running expenses of the organization.<sup>23</sup> Inasmuch as the Principal Agent now serves under the Chairman, his office has been decreased in importance. His work is now directed by the Chairman, who is always in the office. The Principal Agent's importance was further decreased in 1928 when Mr. J. C. C. Davidson, the Chairman, divided his office first into three and finally into two offices. As matters now stand there is a Director of Publicity who has complete charge of publicity outside of the control of the Principal Agent. It is therefore the Chairman of the Party Organization who directs the regular work of the party, and he is responsible only to the leader of the party. The local associations have no power over him. He has, in the words of a recent critic, "more power vested in him than a Tammany Hall boss."<sup>24</sup> This is centralized control but few will argue that the organization of the party suffers from it.

The Liberals have had a different experience, but the result has been the same. The Chief Whip, by virtue of being Chairman of the Executive Committee of the Liberal Central Association, continued his control over the organization of the Central Office. He was assisted by the Principal Agent but retained the chief power himself. He collected and disbursed the party funds, and in general controlled the party organization. He frequently consulted with the district federations, and their officials were in fact district agents of the Chief Whip. The Master of Elibank, who was Chief Whip for many years down to 1912, developed the practice of having a whip for each

<sup>21</sup> It is not now correct to say that "the Central Office is essentially an extension of the Whip's Office."

<sup>22</sup> At any rate this has been the practice under Conservative governments of recent years.

<sup>23</sup> The Chairman collects the money for current expenses and relies upon the Treasurer to collect the big sums for elections.

<sup>24</sup> *The Times* Nov. 22, 1929, p. 19.

section of the country to stimulate party activity.<sup>29</sup> Sir Robert Hudson, who was both Secretary of the National Liberal Federation and Honorary Secretary of the Liberal Central Association, was also a power in the machine. During the War, party organization languished. Then in 1918 it was found practically impossible for the Chief Whip, in addition to the increasing burden of his parliamentary duties, efficiently to supervise organization work, and this latter task devolved upon his Chief Assistant Whip. After 1918 the Liberals were divided and there were two separate Liberal organizations. The Independent Liberals placed the question of candidatures, funds and other organization work in the hands of a small committee, while the Coalition Liberals used their Chief Whip and a few others to handle organization work. In the meantime, as from January 1, 1924, the constitution of the Federation was changed and the district federations became branches of the National Liberal Federation; moreover, the executive committee, elected by districts and quotas, was made more representative of the whole party. Following the election of 1924, a convention was called by the National Liberal Federation and the party was reunited. An Administrative Committee, as previously described, was set up and placed in control of the party. This Administrative Committee then appointed a small Organization Committee and selected a Chairman of the Party Organization.<sup>30</sup> It is the holder of this last-named office, at present Mr. Ramsay Muir, who controls the Liberal Central Office. There is a Chief Agent and a Chief Whip, but both are under the direction of the Chairman so far as party organization throughout the country is concerned. The Whip is not in control, nor does he collect or disburse the funds. Centralized control is given to one man, the Chairman of the Party Organization, who in this case is not responsible to the leader of the party, but to the Administrative Committee.<sup>31</sup>

In the Labour Party, the Whip never has been an important person in the organization. The Central Office work has been performed

<sup>29</sup> The Conservative Party does this also. The success of the plan depends entirely on the personality of the whip.

<sup>30</sup> *The Times*, Feb. 17, 1927.

<sup>31</sup> The Liberal Party has hardly recovered its equilibrium and its organization is therefore somewhat tentative. But the present plan seems to be working satisfactorily to everyone and is likely to continue. The Liberal Central Association, sometimes called the Liberal Central Office, is only concerned with the Chief Whip's activities, which are now purely parliamentary. The Chief Whip, however, is *ex officio* a member of the Administrative Committee and is also at present on the smaller Organization Committee. All these bodies are distinct but there is proper liaison among them through several officials.

under the direction of the Secretary of the party, Mr. Arthur Henderson. It is he who is largely responsible for building up the organization of the Labour Party. Under him have been the National Agent and the Chief Woman Officer.<sup>22</sup> Considerable power is possessed by the Treasurer, who has been Mr. Ramsay MacDonald, the leader of the party.

In all three parties, therefore, the Chief Whip is no longer the head of the party machinery outside of Parliament. He may or may not be in the Central Office,<sup>23</sup> but he has no control over it. A new post has been developed, that of Chairman of the Party Organization, and the holder of this position is the head not only of the Central Office, but also of the whole party organization. In the Labour Party the party organization is really controlled by the National Executive and the Secretary of the party, who directs the Central Office. Finally, in the two older parties the principal Agent has been placed under the Chairman and has been shorn of some of his powers. One can now grasp the great transformation of party organization which has taken place.

It has been observed previously that party activity has greatly increased in volume and scope. It is in these respects that the greatest changes are noticeable. For instance one of the greatest developments since 1902 has been the extension of full party membership to women, and the organizing of the newly enfranchised women after 1918 within the various parties. Both the Conservatives and Labourites created a new Women's Department within the Central Office, while the Liberal women organized themselves into a separate Women's National Liberal Federation. The head of the Conservative Women's Department is Deputy Principal Agent, but she does not of course interfere with the men's side. In the Labour Party the women's work is headed by a Chief Woman Officer who is at the Central Office.

Women have taken to party work with such eagerness that in many constituencies they do more of the work than the men. At present one cannot say that they are having the influence on policy that their activity warrants, but in the years to come they should be watched.

<sup>22</sup> Mr. Edgerton P. Wake was National Agent from 1919 until 1928. He was succeeded by Mr. G. R. Shepherd. Dr. Marion Phillips has been the Chief Woman Officer.

<sup>23</sup> After the Conservative defeat in the elections of 1929 the Conservative Chief Whip was provided with an office at the Central Office. But he in no sense controls the office. When the party is in power the Whip has an office provided for him at No. 12 Downing Street.

Another great development of British party organization has been the creation of junior organizations. As early as 1908 the Conservative annual conference resolved "that in the interest of the party it is desirable that junior associations should be formed throughout the country." The Conservatives made an early start and today they are far in advance of the other parties.<sup>34</sup> The Junior Imperial League has 1,500 branches and 250,000 members. It has full-time organizers, a regular publication and regular meetings. Lord Stanley regards work of this League as so important that he recently resigned as Deputy Chairman of the Party Organization in order to direct it.

These two new party activities are responsible for a considerable portion of the expansion of the Central Offices. But the publicity activities are also responsible. With the rise of the art of publicity, parties necessarily expanded their staffs so as to keep pace with the times. In every Central Office there is a press and publicity department. The Liberal Party maintains a separate Publication Department which is responsible to the Federation and the Central Association, but which co-ordinates with the Liberal Campaign Department to take charge of all forms of propaganda.<sup>35</sup>

Another interesting development is the setting up of educational institutions to teach politics and party organization work to the active members of the party. The Conservatives have established Philip Stott College and have recently been given a large estate to develop further their educational work.<sup>36</sup> The Liberal Summer School has been going for nine years now and one should not minimize its influence on the Liberal Party.<sup>37</sup> The Labour Party occasionally holds summer schools of a week's duration, but the party has been handicapped in this work by lack of funds.

The development of extensive research agencies at the various Central Offices is another significant development of post-war years. An adequate idea of the work performed by these agencies cannot be given here, but suffice it to say that no more valuable and significant development in British party organization has occurred than the growth of the research and information side of the Central Offices.

<sup>34</sup> The financial difficulties of the Labour Party have precluded them from subsidizing the Labour Party League of Youth, which has therefore flourished only in a few of the better organized constituencies.

<sup>35</sup> See the *Annual Report* of the National Liberal Federation, 1928, p. 98.

<sup>36</sup> Ashridge House, a large country estate not far from London, was given to the party in honor of Bonar Law to serve as a college for the Conservative Party. It was completely remodeled and was dedicated in July, 1929.

<sup>37</sup> See the article on the Liberal Summer School by E. D. Simon in *The Contemporary Review*, September 1929, p. 273.

One final development of party organization should be mentioned. The agents of the various parties, those professional politicians upon whom largely depends the success or failure of the party at the polls, and who bear the burden of the all-year-round party work, have improved the organization of their national associations.<sup>3</sup> Examinations have been instituted and agents are carefully certified. Increased pay is attracting better men and women to the profession. Since registration work is no longer of importance, the problem of the agent today is largely that of organization and propaganda; consequently a different type of agent is required. These agents, although usually employed by the constituency associations, constitute a strong force in favor of the Central Office. They look to London for assistance and promotion.<sup>4</sup>

With all of these changes in party organization one might expect a change in the methods of financing parties. But with the exception of the Labour Party, little change can be observed. The Labour Party secures its funds largely from the rank and file through collection of the affiliation fees of the trade-unionists. The two older parties, on the other hand, still rely upon the gifts of a comparatively small number of persons.<sup>5</sup> The Liberals have attempted to democratize their financial methods, but little success has attended their efforts.<sup>6</sup> The Conservatives, already adequately financed, find no reason to discard a system which is so productive.<sup>7</sup>

One notable feature of British political life remains to be mentioned, because of its bearing on party organization. Before the War there

<sup>3</sup> The National Society of Conservative and Unionist Agents was founded in 1890. The Society of Certified and Associated Liberal Agents was founded in 1893. The Labour Party Association is called The National Association of Labour Registration and Election Agents. All three of these associations publish regular magazines for confidential circulation among the members. In addition to the regular annual meeting, there are many meetings of the agents in the various areas.

<sup>4</sup> The Chairman of the Conservative Party Organization is President of the National Society of Conservative and Unionist Agents. The Labour Party advances money to pay for the services of party agents in the constituencies. A plan is now in effect which will eventually cost the national Labour Party about \$10,000 a year. In 1925 about \$25,000 was paid for this purpose. *Annual Report*, 1926, pp. 23-24.

<sup>5</sup> There are a number of constituencies where expenditures are met out of funds collected in small amounts from the members.

<sup>6</sup> The so-called Million Fighting Fund was launched as a serious attempt to broaden the subscription lists of the party and to make it less dependent upon the subsidies from the Lloyd George Fund. Although the project was not a complete failure, it did not come up to expectations and has now been ended.

<sup>7</sup> The writer has in preparation a book which will treat of the use of money in English, French and German elections.

were numerous powerful associations founded to advance or oppose some one policy. One recalls the Tariff Reform League or the Free Trade Union. These non-partisan bodies greatly assisted the parties and had a profound effect upon elections. Since the act of 1918, however, they have been so restricted that they now have little influence at elections. As they cannot take part openly in elections, much of their power is gone. Whatever work they once performed is either accomplished by the parties or left undone. The probability is that a good deal of their effort was sheer waste, although they added considerably to the liveliness of elections.

With all of these significant developments in British party organization in mind, what can be said of their effects on British political life? A number of conclusions may be ventured. In the first place, the great centralization of power which has been brought about, the strengthening of the machine, has not been a blow to leadership as Ostro-gorski feared. On the contrary the lessening influence of the democratic federations and the growing influence of the Central Offices have resulted in a strengthening of party leadership. The parties have become more cohesive forces, and the party organizations more efficient instruments of popular government. Even in the Labour Party, where at first the parliamentary caucus and the National Executive were devised as checks on a Labour Government, these have been reduced to the position of being consulted by the Labour Ministers. Committees are less important and leadership is more important. Even the tremendous growth of the organization has not lessened the power of leadership. As Professor Munro has written: "Leadership counts for somewhat more and organization for somewhat less than in the United States."<sup>4</sup>

In the next place the greater power of the Central Offices and the strength of the party leadership have tended to increase party discipline. This tendency has been bitterly assailed by critics who lament the absence of real, independent voting in the Commons. Debate is more stereotyped, and the results of divisions could be announced before the divisions occur. The arguments presented have little or no effect on the voting, although they probably do affect opinion in the country. The unity, however, which strict discipline insures, greatly simplifies popular government and makes for stronger party responsibility.

<sup>4</sup> W. B. Munro, *The Governments of Europe*, p. 258.

As to the control of British parties we should speak more cautiously. But it is clear that the control of the parties is not possessed by the rank and file. With the increase in the power of the organization and the expansion of the electorate has come the enhanced importance of the professional element. In the Conservative and Liberal parties, the leader of the party controls the party organization, whereas in the Labour Party the control is possessed in final analysis by the trade unions. Perhaps democratic control of party organization in England is foredoomed to failure, because under a system which concentrates power in a Prime Minister immediately responsible to the Commons, the Commons in turn being responsible to the people, the determination of policy and the control over the party machine are almost necessary powers of a party leader. Even the Labour Party seems now to have recognized this. Every leader desires popular confidence in the control, but not necessarily popular control. This formalism and regularity, this reliance upon leaders, is not necessarily the degradation of democracy, as Ostrogorski charged. It is a rejection of democratic methods, but it may result in the achievement of democratic ideals.

Clearly British parties have raised the tone of public life somewhat higher, and without question they are performing their task of political education better than ever before. This is all to the good. And yet it is equally clear that present-day party organization has not sufficiently modernized itself so as to handle a vast electorate. As Mr. Baldwin said recently before the Central Council of the Unionist Association: "The whole organization of a party has to adapt itself to the modern conditions of electioneering, and to the enormous electorate that has come into existence after the war; and I doubt if any party has yet adapted itself fully to meet the new conditions." "Nor have British parties, with the exception of the Labour Party, devised adequate means for the expression of the opinion of the party. But they have not become more like American parties as Ostrogorski predicted they would become. Rather have they developed more as English parties would be expected to develop. That is, they have become more centralized and integrated. As the Cabinet has become more powerful, so have the central party organizations. Their general tendency has been centripetal. As Ostrogorski in another connection predicted:

... it must be admitted that among the divergent forces which have just been reviewed, those which hold the Caucus in check are, if anything on the decline; that in their perpetual contests the chances are rather on the side of

*"Monthly Gleanings and Memoranda, vol. LXX, p. 178 (August, 1929).*

the centrifugal forces favouring the formalism and the mechanicalness which the Caucus tends to introduce into English political life under the auspices of democracy.<sup>45</sup>

Political organization in Britain has become more mechanical, more strongly controlled from the center. As Sir Charles Marston said a short time ago in criticizing the Conservative organization, "It is democratic until it reaches the top."<sup>46</sup> In theory English party organizations are quite democratic and anyone can fill even the highest offices. But in practice the higher positions are restricted. Through the maze of committees the discerning eye can see that the leader of the party holds the power and that the party is expected to follow his lead. The organization is his tool and it responds to his decisions.

<sup>45</sup> *Op. cit.*, p. 618.

<sup>46</sup> *The Times*, Nov. 22, 1929, p. 19.



## *Part Two*

# THE HOUSE OF COMMONS

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"Government, like dress, is the badge of lost innocence."

TOM PAINE in *Common Sense*.

"Your business is not to govern the country, it is, if you think fit, to call to account those who do govern it."

WILLIAM EWART GLADSTONE in a speech to the House of Commons during the Crimean War.

# V

SIR BRYAN FELL

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## *The Working of the House of Commons\**

**I**N some quarters it is fashionable to decry Parliament on the ground that it talks a lot and does nothing. This charge, which is based on a complete misunderstanding of the functions of Parliament, must, however, be met before a proper appreciation of the working of the House of Commons can be obtained. The important fact to realise is that Parliament is a deliberative, not an executive, body. Executive functions are performed by the Crown acting on the advice of its Ministers, who are themselves dependent on the support of Parliament in general, and on that of the House of Commons in particular, as representing the opinions of the electors. The primary function of the House of Commons is, then, to interpret the wishes of its electors, for if it fails to perform this, the political complexion of the House will be changed and a number of its members will not be re-elected at the next general election.

In these circumstances members naturally desire to express their opinions on the subjects brought before them, particularly those which affect their constituents closely. This can only be done in debate, so it is not surprising to find that the House of Commons does do a lot of talking, because that is what it is there to do.

This brief introduction is only intended to remove the misconception that Parliament has any executive powers, and thus clear the way for a detailed consideration of the way the House of Commons works.

The three main functions of the House are legislation, finance, and criticism of the Executive; and, of course, the ideal arrangement would be for all these three classes of business to be given equal opportunities of being considered. But although about a hundred

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years ago this might have been possible, it certainly is not so now. And the reason for this is that the Government now largely controls the time of the House. It would not be possible within the scope of this article to trace in detail the process by which the Government acquired this power; it must suffice to say that since the Reform Bill new responsibilities have been continually assumed by the State towards its citizens demanding a never-ceasing flow of legislation, while at the same time there has been a great increase in the number of members desirous of speaking. These two factors have made the pressure on the time of the House of Commons very severe; but although between 1832 and 1880 the Government gained some control over the time of the House, further encroachments were stoutly resisted, and the Government was only completely successful in its oft-repeated attempts to get control of the time of the House when it was able to turn to its own advantage the changes in procedure rendered necessary by the complete breakdown of the old procedure under the obstructive tactics of the Irish members—changes which had been made for the protection of the House as a whole. The result is that in a normal session the Government controls the greater portion of the time of the House, and that, in a session like the present, Government business has precedence on every day. Naturally the Government is interested in passing its legislation and in getting through its necessary financial business, but it is not anxious to face criticism except when it comes from the official Opposition on party lines in the shape of a vote of censure. The control over the time of the House thus acquired by the Executive, although it may have resulted in greater certainty of the business to be reached each day and in a more orderly conduct of that business, is not without dangers which might even threaten the very existence of our parliamentary institutions. There are signs that the Executive, supported by a powerful and extremely able bureaucracy, are growing more and more impatient of criticism which often appears to the expert as uninformed, but which nevertheless frequently represents the opinion of 'the man in the street.' Sometimes it is the plea of urgency that is used to stifle discussion, at others the forms of the House will be mercilessly exploited to the same end, while all the time the process of removing a number of subjects from the purview of Parliament is continuing. But the worst feature is that already the spirit of independence which in the past leagued the back benches of both sides of the House against the encroachments of the Executive (often

supported by a front Opposition bench which hoped to profit in its turn) is nearly dead. The Government of the day can usually count so much on the subservience of its back benchers that the Speaker now stands almost alone as the protector of the House's rights—sometimes, it would seem, almost in spite of the House itself.

In this respect it is almost impossible to exaggerate the importance of the Speaker. During the last fifty years the position of the Chair has been completely altered. In some ways it has grown more autocratic—it has certainly become completely removed from party politics: it has been charged with the protection of minorities, since the closure requires its sanction; by the power to select amendments it has been entrusted with the regulation of debate so that all points of view may be reasonably heard, and as guardian of the Rules of the House it is one of the bulwarks of democracy. Freedom of speech, originally asserted against the Crown, has now to be asserted against the servants of the Crown, who threaten to exercise over the House a mastery such as no sovereign ever succeeded in obtaining. The party machine is now so strong that, at the crack of the Whip, members seldom fail to vote on strictly party lines, and the House tends to become an automatic register of the Government's decrees. Suppress debate, and the reason for the existence of the House of Commons is gone. The Speaker is now the principal guardian of the freedom of debate, and as such is entitled to the fullest support of the House, and the House of Commons will have signed its death warrant on the day that it refuses to support its Speaker in defence of its rights and against the encroachments of the Executive.

The time of the House is thus principally occupied, even in a normal session, by the consideration of Government business, legislative and financial. So far as legislation is concerned, in a normal session a certain number of days are devoted to the discussion of the principles (second readings) of non-Government bills, which, if passed, proceed to a special standing committee for discussion in detail. At a later stage of the session a still more limited number of days is allotted for their further consideration by the House. The number of bills which get through the House in this way is very small—at most three or four a session. A certain number of bills of an entirely non-contentious character also get through the House by being taken after 11 p.m., but such bills, though frequently of great practical utility, are not of much parliamentary importance, nor are they at all numerous. By far the greater number of bills which reach the Statute-

book originate in a Government department, and it is those which it is now proposed to consider.

Bills originate from a Minister either to carry out the programme of the party in power, or because there has been some inquiry or report from a Royal Commission or committee necessitating legislation, or because of an outcry on some particular subject in the House or in the country, or perhaps because of some devastating legal decision. Instructions are given by the Minister to the Parliamentary Counsel's office to carry out the particular object by drafting a bill. The Parliamentary Counsel and the department prepare a draft bill, which then goes to the Cabinet, who generally refer it to the Home Affairs Committee, a body consisting of certain Ministers and permanent officials, which arranges the legislative proposals for the session according to their importance or urgency—*e.g.*, those which are (1) absolutely necessary; (2) very desirable; (3) necessary annuals; (4) useful departmental measures, and so on. There appears to be much competition between departments to get in first. V56.2.48 5314

After the draft bill has passed the Home Affairs Committee it is brought down to the Public Bill Office of the House of Commons, before introduction, to see that it conforms with the Rules and Orders of the House. Adjustments are generally agreed upon between the House of Commons' officers and the draftsmen, but if doubtful points cannot be agreed the questions at issue are referred to the Speaker, who gives a ruling (private), and his decision is practically always accepted by the department. If it is not so accepted, then a special motion has to be made in the House itself, which is the final arbiter on all questions of its own practice, to exempt the bill from what the Speaker has ruled to be the constitutional practice of the House.

After its introduction the bill is printed and put down for second reading, at which stage the principles of the bill can best be discussed. In committee the bill is gone through clause by clause, line by line, and, if necessary, word by word, and afterwards the House reviews the bill as amended and can at that stage still move amendments in detail. Finally the bill is read the third time, when only the contents of the bill can be debated and no detailed amendments moved. If the House of Lords returns the bill with amendments, these are considered, but the bill is only open to reconsideration in so far as it is affected by the amendments made by the Lords. It will be remarked in the very brief sketch of the procedure given above that the bill is considered in detail by a committee. That committee may be the

whole House under another name, or it may be a committee of some fifty members called a standing committee, and in any event the bill, as amended, is reviewed in detail by the House. So far the House of Commons has never made up its mind to delegate completely its powers of piece-meal examination of legislation, and even insists on keeping the committee stage of the more important bills on the floor of the House. It is almost impossible to imagine a body less well fitted to examine the details of a bill than a committee which may consist of 615 members. On the other hand, with all its disadvantages, the system does ensure that any member who wishes to move an amendment can put it on the paper with the reasonable certainty that if it is of any importance it will be called. Recent changes in the Standing Orders were intended to strengthen the chairmen of standing committees, by giving them power to select amendments and to facilitate the conduct of business in those bodies with a view to inducing the House to part more willingly with the committee stages of bills, but it is too early yet to say whether the experiment has realised the hopes of its sponsors. The apparent duplication of the report and committee stages has in fact been largely got over in practice by the Speaker refusing as a general rule to select amendments which have been fully discussed in committee upstairs.

But the fact still remains that a disproportionate amount of time is used in considering legislative proposals, and this will continue to be the case until the House makes up its mind to devolve some of its responsibilities for detail either to a committee of its own to an extent which it has not yet seen fit to do, or to a Government department, by allowing the detail of a bill to be filled in by departmental orders, provided that all such orders are examined, line by line, by a committee of the House before they come into force. There is already a tendency to make the form of legislation more general, leaving the details of an Act to be filled in by orders and regulations made by the executive departments, which have to be confirmed by resolutions (affirmative or negative) passed by both Houses before they become operative. The question arises whether this confirmation leaves any real control over the Executive in these matters to the House of Commons. The affirmative resolution—the most common form of such resolutions—leaves no power to the House to amend the regulations; it can only approve or dissent. The discussion on such orders usually comes on after 11 at night, but, as such orders cannot come into force unless the House has agreed to them, the Government has

to keep a House (see that there are sufficient members present to carry the closure). It is not so in the case of a negative resolution, when the House is often counted out but the regulations still come into force. This procedure leaves a certain indirect control to the House, for while it is unlikely that the House will reject such orders, the debate might compel the Government to withdraw the order and reintroduce it in an amended form. In any case, a department will take more care over an order which has to run the gauntlet of parliamentary criticism than over one which it hopes to slip through unobserved.

But under a more extreme system of devolution the House would pass a skeleton bill, approving the principle of the measure, limiting the finance of the bill, and leaving the complicated details of the bill to be worked out by the department. These proposals would then be put before the House in the form of draft regulations requiring an affirmative resolution. A large committee would be set up to which all these regulations would be referred, having power to divide itself into sub-committees and to summon witnesses from the departments, and the draft regulations would not come into force until the committee had made a report on them to the House and the House had agreed to that report. Such a committee would also give valuable, interesting, and much needed work to the private member. This procedure should not apply to Finance Bills, Consolidated Fund Bills, or Bills to alter the Constitution.

But however much it might be found possible by devolution to ease the passage of legislation through the House of Commons, it would not be possible to abolish the right, and indeed the duty, of the House to criticise all proposals brought before it. Freedom of debate is essential to democracy, but it naturally follows that, as a rule (though urgent measures can be and have been passed through all stages in a single day), measures cannot be forced through the House of Commons with the same lightning rapidity with which they are passed in certain Continental countries. But if, in this country, the necessity of explaining their proposals and endeavouring to meet the arguments of their opponents by reason rather than by force is a handicap to a Government desirous of passing a large amount of legislation, it is also true to say that their own lack of planning may prove an equal handicap.

As a rule, all goes well for the first or even the first two sessions; then the legislation seems to become haphazard. By the third session

there appears a lack of co-operation between the Government and their supporters. Ministers become more and more tied to their executive departments, while the private member has been partially disillusioned and begins to look forward to the next general election. There is much to be said for Lord Eustace Percy's scheme for a five years' plan for parliamentary work. Although this plan would doubtless be interrupted by some urgent business arising, it could be adhered to in the main, and members would know where they were and competition between departments to get their measures in first would cease.

It is also open to question whether Ministers who are attempting to combine policy-framing in the Cabinet with the work in their departments and the conduct of their business in the House are not overstrained by the length of the session and worn out by the end of a Parliament.

Physical fitness and mental freshness are necessary conditions of an efficient democracy, and by the beginning of August the House of Commons, and particularly its Ministerial members, have neither. Under present conditions Parliament usually rises about the end of July; by September departmental Ministers are hard at work: the House meets again towards the end of October, and with brief intervals goes on till August of the next year. Ministers have no time to think or plan their time-table for the session. Unco-ordinated legislation is flung at Parliament to be got through somehow; and the outside world gets the impression that Parliament is an unbusinesslike assembly, while its procedure gets blamed for what is partly the fault and partly the misfortune of the Government of the day.

Better planning by the Executive (perhaps a change in the financial year), as well as better procedure in the House, is required before the sessions of Parliament can be shortened and Ministers be given an opportunity of retaining some freshness of mind, which in present circumstances is so liable to be sapped by the fatigues of office.

The legislative function of the House of Commons is so much the most important in the eyes of the general public, and occupies so much of members' time, that except at rare intervals it obscures the other functions of the House, which is often regarded as a machine for the output of legislation. Nevertheless, there are two other functions of the House of Commons—one financial, the other critical—which are as important as that of legislation.



In theory, the House—in a committee of the whole House called the Committee of Supply—annually examines and votes all the services of the State, which are financed out of moneys provided by Parliament—that is, for all the principal activities of the Government with the exception of the interest on the debt and the salaries of judges and certain other individuals which are permanent charges upon the revenues of the State. Nowadays the Supply Services, as they are called, account for over 500 millions of expenditure, and forty years ago—although, of course, in those days the sums involved were very much smaller—the Committee of Supply did actually examine and vote the whole of the Supply Services in detail.

It is difficult to imagine how a body of 600 persons could hope to set about the detailed examination of the enormous sums involved in modern Supply Services, and in practice they do not try. Although twenty days are supposed to be devoted to the business of examining the Estimates in Committee of Supply, little or no detailed criticism is undertaken, but the opportunity is used by the Opposition, who have the right of calling for whichever of the Estimates they choose, to examine and criticise the policy of the Government reflected in the particular Estimates chosen for examination. This is a very happy outcome of a quite impossible situation, but it is doubtful if the best use is even yet made of the Committee of Supply.

The rules binding debate in that committee were evolved at a time when every Estimate came up for discussion, and are designed to limit debate as strictly as possible to the financial policy involved, and only one Estimate may be considered at a time. Legislation may not be mentioned. The result is that it is often impossible to have a full debate under these rules, and there is a great deal of force in the suggestion that they might well be modified in the interests of the House without any detriment to the progress of business, since twenty days have to be given; and if legislation could be mentioned and two or more cognate votes discussed together, the days might be more profitably employed than they are at present.

At the same time, some detailed criticism of the Estimates is necessary. This is provided in the first place by the Treasury, and secondly by the Estimates Committee, which each year reviews the expenditure of a number of departments. The Government remains, and must remain, responsible for the policy embodied in the Estimates, and the Treasury is primarily responsible for seeing that that policy is carried out as cheaply as possible; the Estimates Committee reviews their

efforts, and the knowledge that they are there is no doubt a restraining influence, because, since the days of Mr. Pepys himself, there is nothing the average civil servant dislikes more than being hauled up and criticised in person for extravagance by a Committee of the House of Commons. On the last two of the twenty allotted days hundreds of millions are passed without a word of discussion; but although this may appear silly, it is not quite so silly as it looks, because the policy behind the money has probably been covered in the course of the twenty days' debate.

Having voted the money, the House then proceeds in the Appropriation Act to ensure that it shall only be spent on the objects for which it has been granted; and to see that this is done the House has an officer called the Comptroller and Auditor-General, who audits the public accounts and reports to the House anything he thinks doubtful or wrong. These reports are considered by another very powerful committee called the Committee of Public Accounts, which examines witnesses each year from all the great departments of State and does not shrink from crossing swords on occasion with the Treasury itself.

So much for the spending aspect of the House's financial function. But having authorised the money to be spent, the House must then impose the taxation necessary to enable the revenue to balance that expenditure. Taxation originates in another committee of the whole House called the Committee of Ways and Means, and one of the big days of the session is when the Chancellor of the Exchequer opens his Budget in that committee and unfolds his proposals for taxation in the coming year. If the House approves of these proposals, they are embodied in the Finance Bill, in due course to become part of the law of the land. The House thus carries out its financial functions, if not in the manner originally intended, at least with reasonable efficiency.

It is quite another story with regard to the third, and in some ways the most important, of its functions, that of criticism, which has in these days almost entirely fallen into neglect. As has already been indicated, the House of Commons, up to the date of the passing of the Reform Bill, spent a good deal of time criticising the actions of the Executive, and almost unlimited opportunities were afforded members, not only to ventilate the grievances of their constituents, but, by the discussion of motions, to endeavour to educate the House and public opinion in the way of thinking held by the particular member con-

cerned. Between 1832 and 1935 these opportunities have been rigorously curtailed. In a normal session under the existing Rules and Orders of the House a private member, as apart from the official Opposition, can raise his constituents' grievances: (1) By asking a question, to which the Minister may make an evasive reply. (2) By moving the adjournment of the House on a matter of urgent public importance, a privilege which was intended to secure that the member making the motion had the support of at least a quorum of the House, but which has now been so whittled away by the rigid interpretation of the words 'urgent public importance' as to be almost impossible to secure, however many members may support it. (3) By putting on the order paper a notice of motion for an early day in the hope that the Government may dislike leaving unanswered a highly coloured exposition of their opponents' case. (4) On the motion for the adjournment, which is made at the conclusion of the daily business if that business concludes at any time before 11.30 p.m. This is an uncertain time; a member may sit for days with his speech ready and have no time to deliver it, while on the other hand the House may finish its business unexpectedly at 9 p.m. and no member who wants to move may happen to be present. (5) On first going into Committee of Supply. Once a session a ballot is held for notices of motions on going into Committee of Supply, as a result of which four members have a chance of moving an amendment to the question That Mr. Speaker do now leave the chair on either the Civil, Air, Army, or Navy Estimates. Amendments have to be relevant to the subject-matter of the Estimates concerned, so, except for the Civil Estimates, this opportunity makes only a limited appeal. (6) Adjournment motions for Easter, etc. Often excellent debates take place on these occasions, but they are also frequently occupied by subjects chosen by the official Opposition. In addition, during a normal session private members at the beginning of a session have opportunities for moving motions on a certain number of Wednesdays, the selection being done by ballot. It will be seen, therefore, that, except for question time, the private member has at present very few opportunities of voicing the grievances of his constituents. This lack of opportunity to drive home a criticism leads to the constituent becoming confirmed in his opinion that the House of Commons never does anything useful, to the private member being regarded as an automatic voting machine, while the Executive loses because the private member is the natural link between the Government and the country. After about two years in

office the former is apt to get completely out of touch with the latter, and some home truths from private members might be both useful and efficacious; but no opportunity is given for this, and no Minister can humanly be expected to create opportunities for other people to slang him. The suggestion that there should be more frequent short debates similar to those on the Easter, etc., adjournments is an excellent one, and would, if adopted, enable subjects to be debated which, though perhaps primarily of local importance, may also involve some great principle and would stimulate local interest in Parliament, give opportunities to the private member to prove his worth in debate, and generally infuse some life into proceedings which at times, under the heavy detail of some bill, drag their slow, tedious way along. But much depends on the judicious selection of subjects to be debated by private members and on their attendance at such debates.

It is right that Parliament should sometimes work slowly, though that does not appeal to a generation whose standards are size or speed; but the virtual suppression of the private member has sapped the virility of the House. Parliamentary procedure must not be allowed to stand still; in an age of rapid change our institutions must be adapted to suit the conditions that surround them; that has been done before, and can and must be done again.

The procedure of the House of Commons is flexible; no member can judge it fairly who has not spent at least two sessions on the Opposition side of the House. The latest precedent the 'voluntary guillotine' on the Government of India Bill, encourages the hope that much more may be done by agreement between parties, but the Chair remains the sole bulwark between freedom of speech and the complete control of the House of Commons by the Executive.<sup>1</sup> Despite its imperfections, the forms of parliamentary government and procedure appeal to the British peoples. Wherever the flag has gone parliamentary institutions have followed, and there is a draft code of standing orders from which the Assemblies of the Crown Colonies can select according to their state of development. In all those many lands, in all those many races, men are being taught to settle their differences by discussion and the ballot-box rather than by force. It is unthinkable that a race which has carried the ideals of freedom and democracy throughout the world will suffer its own free institutions to decay.

<sup>1</sup> For an opposite point of view see the appendix on "cabinet dictatorship" in R. Bassett, *Essentials of Parliamentary Democracy*. London: Macmillan.

# VI

W. IVOR JENNINGS

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## A. *The Functions of Parliament*\*

“GOVERNMENT by the people” has in all countries proved to be a myth. But the proof of it has not, in Britain at least, destroyed belief in the Parliamentary system. The House of Commons may represent the people very partially, but at least it is a kind of representation. Six hundred rather peculiar people cannot, under any system of election, express in themselves the inarticulate and unformulated ideas of forty million people. Our system of election was rough-and-ready in 1918; it is more difficult to justify to-day. Yet there are ways through which needs and desires are made known in Westminster. Elected representatives must have their ears to the ground; and, even if sometimes they seem to hear strange noises, they do, in the mass, give expression to something which is not completely a travesty of public opinion.

The party system enables competing points of view to be put forward. Though argument does not directly change opinions, it moulds them by a less direct and obvious process. For it creates discussion outside Westminster. “Politics” are talked openly and freely in clubs, in trade unions, in trains, and even in the home. Ideas are formulated which lay, as it were, unconscious. Needs are made evident by the expression of them. Sympathy begets sympathy.

So the discussion radiates from Westminster in waves of ever-decreasing elasticity. Arguments are transmuted, prevented, simplified, perhaps distorted. A “common opinion” develops, and creates new waves which find their way back to Westminster. They set going new arguments in the smoke-room and more formally in the House. In their turn these arguments produce new rays which go back to the

\*W. Ivor Jennings, *Parliamentary Reform* (Gollancz, 1934), pp. 17-28. Reprinted by kind permission of the author, Messrs. Gollancz, and the Fabian Society.

ordinary people. In this way there is a constant interchange between Parliament and people which does produce a constant assimilation of opinion. In spite of political differences, the historian can point out, over a sufficiently long period, how common opinion has gradually changed. At any given time principles and policy differ fundamentally, but there is a vast body of accepted assumptions depending largely on social and economic conditions.

This is not, of course, "government by the people." Parliament does not govern. A General Election puts a small body of persons in charge of the Governmental machine. To some extent their ideas determine the action of the machine; to some extent the machine determines their ideas. The machine governs, but it needs direction. The politicians take control of a vast army of workers, as a captain controls a ship, or a board of directors a great company. The captain does not turn the propeller, nor the board of directors push the train. But control is in itself a vast power. It can be perverted or abused. The Government consists of men. They may have more than ordinary ability and more than ordinary sympathy. They must be busy people, for the machine is vast and its functions enormous. They are subject to great and unusual temptations. Even if they resist them, they will tend to carry out their own ideas, or ideas which are put into their heads by their associates.

The purpose of Parliament is to keep them in touch with public opinion, and to keep public opinion in touch with the problems of government. Public opinion is not necessarily right. It is necessary to govern the public opinion, because only the individual can answer the problem of his own destiny, and individuals can be treated only in the mass. Even if a Government begins with ideas that are "right" (whatever that may mean), it cannot be trusted to carry them out. There are too many interests at stake, and too many influences at work. On the other hand, public opinion must be educated. It must understand the problems that are being faced and the opposing solutions that may be proposed. The publicity made available through Parliament, and through the varied types of organisation that depend on party politics, enables this end to be achieved with some measure of success.

By reason of its party majority and its power of dissolving Parliament, the Government has control over the House of Commons. No measure is passed without the Government's consent. No important amendment can be made to any measure without the Government's

consent. For in either case a defeat of the Government is treated as a vote of no confidence. The consequence will be, either that the Opposition will take office, or that Parliament will be dissolved. The former alternative is to the Government majority a catastrophe. The latter alternative involves nearly all members in substantial expense; some of them will lose their seats; the Government may lose its majority. Moreover, to vote against the Government means, for the majority, to vote against the party. Such disloyalty is regarded with disfavour not only by those who control the party machine and by those who are able to forward the member's political ambition, but also by some at least who support him at his election. Thus, party loyalty, political ambition, and fear of losing his seat, combine to persuade the back-bench member on the Government side normally to support the Government. The fear of a dissolution or of the entry into office of the Opposition enables the Government to override even a majority opinion on its own side.

It might be thought that these forces are of no avail when the Government has no majority. They are, of course, substantially weaker. But they still operate. The Government party is likely to be all the more coherent. The third party which holds the balance of power has to be very careful of its actions. For it must normally support either the Government or the Opposition. If it normally supports the Opposition, then the Opposition becomes the Government. If its support alters rapidly, there will be frequent elections until the two-party system is in substance restored. But the electors dislike frequent elections. Moreover, it is very difficult for the third party to put its case. It gets attacked from both sides. It appears to be fluctuating in its opinions, no matter how consistent with principles its actions may be. Consequently, the third party tends to be eliminated by the electors. Also, if it occupies the middle position for long, it tends to disintegrate as a Parliamentary party. It sheds its extremes. For ambitious politicians cannot contemplate permanent exclusion from the chance of office. In short, though a minority Government is weaker than a majority Government, it still possesses substantial control over the House of Commons.

Thus the function of the House of Commons is twofold. In the first place, it provides a forum for the exposition and the criticism of the actions and proposals of the Government. In the second place, it provides a forum for the discussion of proposals which, it is hoped, can be adopted either by the present Government or by some future

Government. In both respects the appeal is primarily to public opinion. No proposal will pass, subject possibly to minor exceptions, unless it is approved by the Government. But the Government will need to appeal to the people at some time within the next five years. In the meantime, and at all times, it must keep together the Government party. If a substantial body of opinion can be formed in favour of a policy, the Government may accept it. If the Government does not accept it, some of its support in the country may be taken away. Additional strength is thus given to the Opposition, whose leaders may in consequence form the next Government and be ready to carry the policy into effect.

This appeal to public opinion is the most fundamental aspect of Parliamentary action. It follows that Parliamentary procedure must be so adapted as to make the appeal most easy. In the main, it involves a careful selection of matters of discussion, so that fundamental principles may be put in issue. Technical points cannot effectively be "got over." The place for discussions on such points is in committee. Parliamentary debates should be about general principles. At the same time, general principles are frequently inherent in individual cases and isolated transactions. If a prisoner is subjected to "third degree" by the police, only an individual is injured, but there is in that individual case a gross breach of a fundamental principle. Clearly there must be opportunity for debating such cases. It is not the least of the great merits of the democratic system that it does protect the individual or a minority from oppression. The appeal to public opinion is an appeal for "fair play"; and in a democratic system it rarely goes unheeded.

At the same time, Parliament cannot be concerned only with general principles of Governmental action. Every proposal of the Government involves a multitude of changes either in the existing law or in existing methods of administration. Such changes may involve unsuspected dangers. They may result in injustice to individuals or to classes of persons—whether they be owners of property, trade unionists, or public servants. This aspect of the problem presents itself most obviously where legislative changes are proposed. Every word of a Bill has to receive Parliamentary approval. This means, of course, only that members have the opportunity of suggesting amendments. With rare exceptions, proposed amendments are rejected unless the Government accepts them. Still, to have to justify proposals is in itself a very considerable and a very valuable limitation upon the arbitrary



actions of Governments. It is all the more necessary as legislation becomes more and more technical in character. For such legislation is only in its essential principles the work of Ministers. The details which are almost as important to individuals, are the work of Civil Servants. The Civil Service is undoubtedly honest and incorruptible. But one of the reasons for that is the close supervision of Parliament. A public official who is seeking to carry out a policy in the public interest is liable to the temptation to override the interest of individuals. The possibility of Parliamentary criticism helps to keep him not only honest and incorruptible, but also just.

The problem is not, however, limited to legislation. The policies which all parties have accepted during the past fifty years imply intervention by public authorities in social and economic affairs. Such intervention can be made effective and just only by giving the public authorities wide discretionary powers. Not every town planning scheme, or slum clearance scheme, or scheme of educational administration, can be submitted to Parliament. The Home Office, the Post Office, the Board of Education, the Ministries of Health, Labour, and Agriculture, have wide administrative powers. It is largely a matter of historical accident that some changes of policy need legislation while others do not. Such administrative discretion alone makes government possible; and it relieves Parliament of much of the detailed labour that in fact it has no time to perform. It is not necessary or desirable that every administrative action should be submitted to Parliament. But it is desirable that attention should be drawn to any administrative action which, while not raising any issue of fundamental principle, appears to work unjustly or ineffectively. It is not necessary that the time of the whole House should be occupied with such matters. But it is desirable that some machinery should be provided for keeping a check on administrative action.

Further, there are some respects in which members of Parliament are more closely in touch with popular needs than the Government Departments. It was said by someone at the worst point of the recent slump that he wished the Departments could be transferred from Whitehall to the North. The senior Civil Servants who had most to do with the formulation of policy lived in the comparatively prosperous sections of London, which was itself one of the most prosperous areas of England. Their mental climate differed fundamentally from those who were breathing the very atmosphere of the depression. Members of Parliament of all parties who came from the depressed areas had

an entirely different line of approach. They appreciated, as the Ministries of Health and Labour did not, what the means test meant in practice. No doubt their point of view was as partial as those who looked out from the comparative opulence of London. But clearly Parliament might have provided a means for the co-ordination of the respective ideas.

Thus, though in respect of administration the primary function of Parliament is to record confidence in the Government, members of Parliament could play a valuable but subsidiary part in checking administration. They could prevent injustices and call attention to needs. They do this rather informally at the present time, by personal importunity and through unofficial committees. But these functions might be more effectively performed if machinery were deliberately established for the purpose. In respect both of administration and of legislation, however, there is a distinction between principles which need to be brought home to the electorate and details which are of a more technical nature. The former should be brought before the House, the latter should occupy the attention of comparatively few members at a time. That is, there is in principle a distinction between committee work and the work which might reasonably occupy the time of the Whole House. . . .

## B. Ordinary Legislation\*

The best way to see how far existing defects can be eradicated is to take each step in the legislative procedure and see how far it is necessary, and how far, if it is necessary, it can be improved.

### (a) *Drafting*

The drafting of Government Bills is a long process, involving close collaboration between the office of the Parliamentary Counsel to the Treasury and the Department or Departments concerned with the legislation. Much is done, too, by consultations between the Departments and outside interests. The contents of local government Bills are discussed with the associations of local authorities and with such

\*W. Ivor Jennings, *Parliamentary Reform* (Gollancz, 1934), pp. 57-108. Reprinted by kind permission of the author, Messrs. Gollancz, and the Fabian Society.

professional bodies as the Institute of Municipal Treasurers and Accountants, the Society of Town Clerks, and the Society of Medical Officers of Health. The contents of industrial bills are discussed with such bodies as the Federation of British Industries and the General Council of the Trades Union Congress. In other matters, various voluntary associations are consulted. This is a desirable tendency; it enables the Department to absorb the ideas of outside experts, and also indicates some of the interests which need to be placated. It is possible to consult both the Federation of British Industries and the T.U.C. on an Unemployment Insurance Bill or a Factory Bill without necessarily accepting the views of either. It is desirable to hear what they have to suggest, partly because they are aware of the problems involved, partly because their reactions will indicate the line which some of the Parliamentary Opposition will take. In modern conditions it is absurd to believe that members of Parliament represent their constituents alone. All sorts of "interests" have sought and obtained representation, either by inducing the constituency parties to accept nominations, or by establishing relations with members already elected. There need be nothing sinister about this. It becomes sinister only when bribery or similar methods of persuasion are used, or when the member chooses to represent his "interest" rather than his constituency. A Labour member can represent both his constituency and his trade union, just as a Conservative can represent both his constituency and "the Trade"—provided that in both cases the representation is open and avowed and the exact consideration for representation made clear.

The process of drafting is long and intricate. Not less than three months is at present required on any big Bill. For the Bill has constantly to be travelling to and fro between the Parliamentary Counsel's office and the Departments. Ten to fifteen drafts may be necessary before the Bill is ready for printing. Even a slight increase in the number and size of Bills produced will therefore impose very great strain on the office. Drafting is a very technical job, which requires great experience, and the staff of the office is small. According to the evidence of Sir William Graham-Harrison in 1931, there were in his office four established Civil Servants, all barristers, with four juniors. Each senior draftsman had one junior working with him. Thus it is difficult to draft or supervise more than four Bills at a time—and it must be remembered that the office helps the Ministry to supervise all Bills until they are actually passed.

It is generally recognized that the office has been overworked during recent years, and that it has not always been possible to give proper attention to Bills. It should be remembered in this connection that, if a Bill is hurriedly prepared, mistakes will certainly be found in it after second reading. Amendments will then have to be made in the House, with the result that Parliamentary time will be taken up with drafting amendments, and the drafting itself made less perfect by reason of the very difficulty of amendment. It is very desirable, therefore, that there should be a staff adequate to revise all Bills thoroughly before they are introduced.

But any improvement in Parliamentary procedure which enables more Bills to be passed will throw a greater burden upon the office. And, if great measures of socialisation are introduced, their complication and technical nature will place a burden upon the office which it will not be able to bear. The strengthening of the staff under the Parliamentary Counsel is therefore essential. The work is, however, difficult and trying, and the hours are long (since a draftsman should always be present when a Bill is being discussed in Committee or on report). Comparatively high salaries must be paid in order to attract competent draftsmen.

Also, some of the recent First Parliamentary Counsel appear to have assumed that no competent legislation can be produced except under their own direct supervision. The result has been to make it an even narrower bottleneck than the size of its staff would suggest. There is much to be said for a competent general supervision. It produces uniformity in drafting, and under enlightened direction it should produce a progressive development of drafting technique. It should be remembered in this connection that the American universities—especially Columbia University and some of the State universities—have performed valuable work in studying the technique of drafting in relation to general social behaviour, to the administrative processes of government, and to the system of judicial precedent. There is not the least reason why an English university or several English universities, could not do the same with the help of a small subsidy.

All this applies only to Government Bills. But if private members produce Bills it is essential that efficient drafting arrangements should be available for them. Many Bills are read a first time and printed only for purpose of propaganda, and never receive a second reading. To place its resources at the disposal of private members would place a considerable burden upon the office, and would cause unnecessary

public expense. It seems clear, therefore, that no private member should have access to the office until his Bill has been read a second time. Two methods of achieving this end are possible. The first is to submit for redrafting every Bill which has been read a second time. The Bill referred to committee must then be assumed to be the same as that read a second time. A certificate of a Parliamentary Counsel that the redrafted Bill contains no new principle should be accepted by either House as an authority for a committee to proceed with its consideration. If, however, a Parliamentary Counsel certifies that new principles have been introduced in order to bring the proposals of the Bill into line with the existing law, this should not prevent the committee from proceeding. The committee should either ask the House for further instructions, or it should continue its consideration of the Bill and attach a special notice on the Report stage calling the attention of the House to the changes introduced.

The second method suggested would be, however, more effective. This is to permit a second reading debate to be held, not upon a Bill, but upon resolutions. This point is discussed at p. 83 below, under "Second Reading." Its effect would be to enable a private member who had no technical advice at his disposal to indicate by resolutions the major changes which he wanted made. Since the second reading debate is, in theory at least, wholly upon the principles, the House could effectively discuss the proposal and, if it approved, could then refer the resolutions to the drafting office for drafting. The committee stage would follow at once.

Any constitutional difficulties inherent in either of these proposals could be entirely eradicated by the setting up of a Drafting Committee, as is proposed below, pp. 93 to 95. They are not in any case of any importance, and Standing Orders should provide both methods as alternatives, whether or not a Drafting Committee is established.

### *(b) Introduction and First Reading*

Except for money Bills, which are considered below, the first step is the presentation of the Bill. Any member may either present a Bill after due notice, or move for leave to bring in a Bill. The latter method involves a general explanation of the Bill and possibly a debate. Except possibly where leave is sought under the Ten Minutes Rule, such a debate is undesirable. The Bill is not yet available to members, and the discussion can be based only on the subject-matter as indicated by the long title. The debate can only produce arguments which will be repeated on second reading, unless they are due to a

misunderstanding created by lack of knowledge as to what the Bill will contain. This alternative should therefore be struck out, and all Bills should be presented without leave, except possibly under the Ten Minutes Rule.

Presentation is followed by the first reading. As there can be no debate on this, it may be thought that this stage is unnecessary. But it is in fact a means of giving notice that a Bill is in preparation. Due consideration may then be given to the problems involved, both by interests likely to be affected and by outside experts. Though nothing can prevent the Government from having the best information and the prior knowledge, it is possible and desirable to give others the opportunity of collecting the necessary facts.

Introduction under the Ten Minutes Rule is of a different nature. It is used by private members who have not secured a good place in the ballot for private members' time. It allows a private member to make a short propaganda speech on a subject in which he is interested, and enables one who opposes to make a similar speech. This is one of the few ways in which a private member can create public opinion in favour of a policy which is not likely to be adopted by the Government. It takes up very little time, and it is very useful in keeping a subject to the fore. The law of blasphemy, which is at present a disgrace to any nation, Christian or otherwise, is the sort of subject which needs to be kept before public opinion. So long as it is not enforced, it is innocuous. But so long as the law remains there is always the possibility that some Government may try to enforce it. Yet public opinion may well forget the danger unless it is regularly pointed out. The Ten Minutes Rule is not a very effective instrument for enlightening public opinion, but it is better than nothing, and so should be maintained.

Also, it is possible to make the Ten Minutes Rule an effective means for the introduction of legislation by private members. The present system, whereby most Fridays are devoted to private members' legislation, is almost always quite futile, and accordingly it is proposed . . . that it should be abolished. There is at present no means for providing that the Bills debated shall be of some value, and possibly of interest to a majority of members. Private members ballot for priority. Since the introduction of a Bill on private members' day is a good means of securing Press publicity, there are few members who do not take part in the ballot. Frequently, a Bill so introduced is quite useless, and is "killed" when a Minister explains, as politely as he is able, that it is

useless. Frequently, on the other hand, a Bill which many members wish to discuss is not brought in because the member who wishes to propose it is unsuccessful in the ballot. Sometimes a valuable Bill is preceded on the Order Paper by a futile Bill, or by a member who is *persona non grata*, so that the House is counted out. And sometimes a valuable Bill is preceded by another, and, because some member objects to the second Bill, he obstructs the passage of the first. It is not too much to say that four times out of five Friday is wasted, and the proceedings of the House bring Parliamentary government into contempt. Under proposals made elsewhere . . . opportunities for introducing legislation will be made available to private members. For it is suggested that the present standing committees should be superseded by smaller committees attached to Departments or groups of Departments. A member interested in a subject would probably be a member of the appropriate standing committee, and might be able to induce it to report to the House that legislation on a particular subject was necessary. In any case, a private member could suggest to the appropriate committee, whether he was a member of it or not, that certain legislation was desirable. If in addition it were provided that any Bill introduced under the Ten Minutes Rule and accepted by the House should be referred to the appropriate committee for report, the private member would obtain an excellent means of getting the subject discussed. If the committee recommended that legislation was desirable, the Government in most cases would think it necessary to take the opinion of the House by providing time for second reading—it could, if it wished, leave the matter to a free vote, as it sometimes does on Fridays at the present time. Such a proposal would, of course, give no opportunity for Opposition members to raise purely party issues. But it is idle to pretend that when the House discusses party issues raised from the Opposition benches it is *legislating*. It is exercising the important function of discussing *policy*: and it is believed that, under the system proposed later on in this book, there will be better opportunities for such policy discussions than exist at present. The proposal now being made has for its object merely the improvement of Parliament as a legislative machine.

### (c) *Second Reading*

The second reading is by far the most important stage. Its purpose is to secure a general debate upon the principles contained in the Bill. In this it is usually effective. It is, indeed, the function that the House of Commons is most capable of performing. For, while much

committee discussion demands a certain technical knowledge, the average member is capable of appreciating whether the general objects of a measure are such as he can approve. Moreover, adequate preparation is possible. A brief is provided for the Minister in charge of the Bill, and front-bench speakers chosen by the Opposition can consult their technical advisers and their advisory committees. In addition, the library is available to members; and with a little care this institution could be made much more effective as a library, and even, if it were adequately staffed, as an information bureau. . . .

It is possible, however, for the Department concerned to give much more assistance than is sometimes now available. Some Bills are prefaced by excellent memoranda—the Bill which became the Children and Young Persons Act, 1932, contained a good example. But this practice is not always followed. Neither the Local Government Bill, 1928-9, nor the Unemployment Bill, 1933-4, was adequately explained beforehand, though they were both very complicated measures. It is essential that members should have, before the second reading debate, an explanation of what a Bill proposes to do, and *why*. This practice would solve, for example, the problem of legislation by reference. Such legislation is most effective; for it prevents the discussion of already accepted principles, and so saves valuable Parliamentary time. Also, it is much easier for a court to determine the effect of amendments if they are actually inserted in preceding Acts. The memorandum should therefore explain the general effect of the more important clauses of the Bill, together with the reasons for choosing one proposal instead of its obvious alternative (e.g. the reason for vesting the general control of the Unemployment Assistance Board in the Minister of Labour, instead of in the Minister of Health). References should be included to the relevant official publications, Parliamentary debates, and other relevant material (e.g. "This clause is based generally upon the proposals in paras. . . . of the Final Report of the Royal Commission on Unemployment Insurance; but it departs from those proposals in the following respects . . . for the following reasons . . ."). If the Bill is produced on the recommendation of a standing committee . . . the memorandum might take the form of a special report from that committee.

The time devoted to the second reading of any Bill must necessarily depend upon the nature of the Bill. In the case of a Government Bill, discussions between the whips' offices are likely to be the most effective method of determining how long should be given. The ordinary



procedure for closure is sufficient to prevent obstruction. The Speaker should, however, make more use of his power of preventing repetition and should be instructed by the House to prevent the growing practice of reading speeches. There is at present too great a tendency for members to deliver speeches which they have prepared, whether or not their arguments have already been put forward.

Since the second reading is necessarily a debate on principles, it seems quite unnecessary to debate upon a Bill, as is the present practice. Where such a Bill is available, it is, if properly explained by a memorandum, the best possible way of indicating the proposers' intentions. But the need for a Bill has three substantial defects. In the first place, it cannot be read a second time until all the proposals have been thoroughly examined (in the case of a Government Bill) by the drafting office, and all the consequential provisions inserted. For instance, the financial details, the administrative arrangements, the procedure for legal proceedings, and the schedule of repeals have to be thought out and put into statutory form. In the case of any complicated measure, this may take a very considerable time, especially so long as the drafting office remains a bottle-neck. None of these matters needs to be debated—or ought to be debated—on second reading, yet the present need of having them in the Bill substantially increases the time which must elapse between a Departmental proposal for legislation and the first debate in Parliament.

In the second place, the need to produce a Bill renders difficult the introduction of effective legislation by private members (including members of the Opposition). A private member knows the result which he wants to achieve. He may not know the best means of attaining it. He will lack both the technical advice on the subject with which he is dealing and the professional assistance in drafting. Four things may follow. First of all, the Bill will probably provide for the administrative arrangements being made by the order of the appropriate Minister, whether such a method of legislation is appropriate or not. Secondly, the Minister for the relevant Department may report that while the Government approves the principle of the legislation, the Bill is not aptly drawn to effect the purpose in view, with the result that the Bill is defeated. Thirdly, the relevant Minister may insist that, though the object meets with general approval, considerable amendment will be necessary in committee—with the result that the Bill fails to pass owing to lack of time, or takes Parliamentary time that could be devoted to other purposes. Fourthly, the Bill may

be passed in its badly drafted form or with inadequate or ineffective administrative arrangements.

These considerations suggest that there should be an alternative to second-reading debate upon a Bill. The object would be better achieved in many cases by a debate upon resolutions. If the resolutions were approved the Bill could be prepared by the drafting office (under the supervision of a drafting committee, as suggested below, pp. 93 to 95, if such a committee is set up), and could pass through committee in the same way as any other Bill.

#### (d) *Financial Resolution*

Most Bills involve some charge upon public revenues. Under the present procedure no charge can be imposed save upon the proposition of a Minister made to a Committee of the Whole House. Consequently, the second reading of a Government Bill is followed by a financial resolution discussed in Committee of the Whole House and then reported to the House. The reason for this is primarily historical. If the King wanted to spend public funds, he approached Parliament through a Privy Councillor, who was a member of the House of Commons, with a request for the statutory authority. The House went into Committee in order to discuss the matter in the absence of the King's representative, the Speaker. If the Committee approved, they reported to the House to that effect, and the House could then go into Committee upon the Bill.

The result is that, after the general debate on the second reading, there is a debate—and there may even be two debates, one on the resolution and one on the report—upon the financial aspects of the Bill. There is of necessity a large amount of overlapping. The second-reading debate on the Unemployment Bill, 1933, was necessarily largely upon the financial aspects. After three days' debate the whole subject had been exhausted. Then came a day's debate on the financial resolution, when the same arguments were produced, sometimes by the same people; and after that a House which had been in session all night spent a morning in listening to the same arguments on the report of the financial resolution. Similarly, any measure for socialisation must largely be financial in character. Consequently, the present procedure allows for what are, in effect, three second-reading debates.

Some may perhaps be inclined to argue that the debate on the financial resolution provides a means for controlling national expenditure. To this there are two answers. The first is that nearly all legislation relating to the social services and to social control of

industry (whether in the capitalist way or the socialist way) is necessarily of a financial character. The second reading is a debate on the advisability of spending public money in the way proposed, or of bringing under public control the income and expenditure of a private business. Legislation of any other character either needs no financial resolution or needs it only in connection with an entirely minor matter. (For instance, a financial resolution was necessary for the Local Government Act, 1933, because of a single clause out of 306 clauses.)

Secondly, the debate on the financial resolution is not used, and cannot be used, to discuss the efficiency of the proposed expenditure. A member cannot discuss whether the money might not be spent more effectively on some other service. And it is only theoretically that he can discuss whether, given the need for spending the money, the proposed method is the best possible. For this involves technical knowledge which the ordinary member does not possess.

The debate on the financial resolution and its report stage are for practical purposes second-reading debates, subject to artificial rules which sometimes prevent a member from discussing the proposals as a whole. They are an opportunity for a member who has prepared a second-reading speech to make it without any fear of being called to order for repetition. They enable the Minister in charge of the Bill and his Parliamentary Secretary to pick up the political challenges which have been thrown down by the Opposition. As a method of financial control they are quite ineffective.

Effective financial control is certainly necessary. But it is possible only to a committee (not of the Whole House) consisting of members who devote the major part of their time to studying the finance of government, and who have at their disposal competent expert advice. This is one of the functions which could be performed by the Standing Committee on Finance which is recommended. . . . It cannot be performed by the House as a whole.

These considerations suggest the abolition of the financial resolution as it is provided for under the present practice. Its place may be taken by a resolution of the Standing Committee on Finance, if such a committee is set up. Even if such a committee is not established, the absence of a financial resolution will have no appreciable effect except to make time available for other business. The Standing Committee on Finance, if established, would report to the Standing Committee discussing the Bill, though its report would also be available to the House.

All this relates only to Government business, since no private member can introduce a Bill imposing a charge upon the Exchequer. This rule does not apply, it may be noticed, to prevent a charge on local funds. Actually, cases of such impositions are rare, and more frequently Bills confer powers upon local authorities instead of imposing duties upon them. Also, there are few private members' Bills, other than those amending private law, which will not impose an indirect charge by demanding extra staff in some public office or adding to the work of existing officers. Nevertheless, it does prevent a member from directly proposing public expenditure which will benefit his constituents or the "interests" which he represents. The temptation to corruption is so great, if the principle is relaxed, that it appears necessary to maintain it. It need not be maintained entirely in its present form. It could be provided, for instance, that no proposal for public expenditure or otherwise connected with the public revenue (e.g. a proposal to impose a tariff) should be made except after a favourable report from the Standing Committee on Finance—a body on which the Government had a majority. Also, it should not apply to Bills promoted by a standing committee, as suggested below (p. 92, etc.).

#### (c) *Committee Stage*

After its second reading and the report of the financial resolution (if any), a Bill is referred to a committee. This may be either a Standing Committee or a Committee of the Whole House (i.e. the House acting as a committee in the absence of the Speaker). A Bill is referred to a standing committee unless:

- (1) It involves taxation or is a Consolidated Fund or Appropriation Bill; or
- (2) It confirms provisional orders; or
- (3) The House otherwise resolves.

In practice, all important Government Bills are considered in Committee of the Whole House. A House of 614<sup>1</sup> members is entirely incapable of dealing with committee points. But this, from the point of view of the Government, is the real advantage of the procedure. A defeat in Committee of the Whole House is a serious matter. The party organisation is therefore stricter. Voting is controlled by the whips. The Minister in charge dominates the assembly far more strictly. The absence of the "Committee" atmosphere conduces to strict party debates, where every amendment is an excuse

<sup>1</sup> The Redistribution of Seats Act of 1944 increased the membership of the House of Commons from 615 to 640. (Ed.)

for a general political argument. Some speeches, at least, are reported in the newspapers, and all are to be found in the *Parliamentary Debates*.

Proceedings in Committees of the Whole House naturally tend to set the tone for proceedings in standing committees. The comparatively small number of members of the latter—the quorum is twenty—tends, however, to create a different atmosphere. There is slightly more cross-voting. Speeches are rarely reported in the newspapers, and the “Committee Hansard” is seldom read. Party divisions are not so prominent, and the Minister’s own supporters are sometimes willing to vote against him.

If the debates in standing committees differ substantially from ordinary committee work, as this is understood in local government and elsewhere, the explanation is twofold. The strict party delineation prevents that mingling of opinion which is the characteristic of committee work. All real committee work implies compromise; there is little in the standing committees except where the Minister concedes a point which he regards as comparatively unimportant. Also—and this is the second reason—practice in Committee of the Whole House prevents any real discussion on contentious measures. Perhaps, too, there is a third reason—the size of the standing committees, which, though much smaller than a Committee of the Whole House, are much larger than effective committee work demands.

This comparison explains why Governments prefer the Committee of the Whole House. It is a means of legislation by the Government itself. The general principles are agreed by the Cabinet, the details are settled by a Minister on the advice—less or more positive according to the political importance of the details—of Civil Servants. The Minister or his advisers, or both, may be wrong. They are more likely to be right on technical issues than any member of Parliament who has no technical assistance. Except in relation to ultimate principles upon which public opinion can be formulated and to the *social* effect of legislation, the Minister and his advisers are more likely to be right than a majority of the House of Commons. Thus there is something to be said for a system which enables a Minister, in all but extreme cases or cases involving peculiar prejudices (as where religious issues are raised), to use his majority to secure approval not only of the general principles of legislation, but of the details also.

It must be realised, however, that on any matter which is not

definitely a political issue, the rule which becomes law is that invented by a Civil Servant, or by two Civil Servants, accepted by a Minister, and thrust upon Parliament. The Civil Servant, like everybody else, may be wrong. Or there may be a better way of effecting the purpose which he has in view. A member of Parliament with the same political bias as the Minister may not be persuaded by the technical advice. A member with a choice of advisers may come to an entirely opposite conclusion. Any member of average ability is capable of weighing the advantages and disadvantages of various proposals if he is put into a position to judge them. Also, if it be accepted that legislation by a Department without effective Parliamentary control is desirable, it must also be admitted that the time of the House is wasted by committee discussion on all except major issues, and that the process of legislating by Department Regulations should go a good deal further than it does now. . . .

If there is to be a committee stage, it should be effective, and not a long series of minor second-reading debates separated by tramps through the lobbies. This means that, apart from the Committee of Supply and/or the Committee of Ways and Means dealing with the estimates . . . there should be no Committees of the Whole House. All Bills should be sent "upstairs" to be dealt with by standing committees.

But standing committees will not be effective unless they are capable of acting as committees. This implies a limited membership. Committees of more than twenty members are rarely efficient. The maximum should certainly be thirty, and the quorum ten. As far as possible they should represent the strength of the respective parties in the House of Commons. Their members should be allocated by the Committee of Selection, and they should contain no members who do not propose to act as such.

The important question relates to their procedure. If they are to be effective they must not act as miniatures of the House of Commons. They must make some attempt to work as a unity, like the committees of a local authority. Purely party debates, followed by party divisions, are quite useless. Moreover, they must have available as good expert advice as that received by the Minister, either directly from the Civil Servant concerned with the matter or indirectly through the Minister. Indeed, if it is possible so to arrange, it is desirable that other expert opinions may be obtained in order that the committee may decide between the experts in the same way as a court of justice or a private

Bill committee. Moreover, the committee must be as specialist in character as a committee of members of Parliament can ever be. One of the major defects of the present standing committees is that Bills are allocated to them, not in accordance with the knowledge of the members, but according to their relative freedom from other work (except in the case of Scottish Bills).

The first reform, therefore, is to make the standing committees more expert in character. Sir Horace Dawkins, the Clerk of the House, suggested to the Select Committee on Procedure on Public Business (H.C. 161, 1932, p. 442) that, instead of the present system of Standing Committees A, B, C, etc., there should be five committees, as under:

1. Internal Affairs and Communications.
2. Social Services.
3. Trade and Industry.
4. Scottish Affairs.
5. Private Members' Bills.

Given general legislation on many subjects (as one might expect from a Labour Government), such a system would be an improvement upon the existing arrangement. But it has the substantial defect that not more than three general Government Bills could be under consideration at once. For instance, an Education Bill would obstruct a National Health Insurance Bill; a Coal Mines Bill would obstruct an Iron and Steel Trade Bill, and so on. Given the reduction in the size of the committees which has already been proposed, there would be no greater difficulty in constituting eight committees than is now felt in constituting four.

It seems desirable, from the point of view of legislative procedure alone (other arguments will lead to the same conclusion), that each Department which legislates frequently should have a special standing committee. The Departments are:

1. Home Office.
2. Ministry of Health.
3. Board of Education.<sup>2</sup>
4. Ministry of Labour.
5. Board of Trade.
6. Ministry of Transport.
7. Ministry of Agriculture and Fisheries.
8. Scottish Office.

<sup>2</sup> Now Ministry of Education. (Ed.)

The Trésury is concerned primarily with the Finance Bill, the Appropriation Bill, and the Consolidated Fund Bills. . . . The other Departments legislate comparatively rarely. Nevertheless, there seems to be no difficulty in setting up a committee for each Département, or a joint committee for a group of Departments where that seems preferable (e.g. Defence; and Dominions and Colonies). Even if they were rarely asked to consider Bills, they would consist of members interested in these Departments, and available when required. Also, it will be suggested later that such committees should consider other matters.

A small committee consisting of relatively expert members would function very differently from a large committee composed chiefly of members with no particular interest in the subject of discussion, together with a maximum of fifteen members specially appointed. It is nevertheless desirable to make expert advice available to them. Primarily this must come from the Department. It is a serious question whether the Civil Servant should sit behind the Minister to tell him what to say, as he does now, or whether the Civil Servant himself should directly answer questions. The latter method may appear to involve some breach of the principle of Ministerial responsibility, a principle upon which many people, especially Civil Servants, insist.

Ministerial responsibility in such circumstances may be a blatant fiction. When purely technical matters are under discussion, all that the Minister can do is to pass on the opinion which he received from his adviser. Indeed, the common phrase, "I am advised that . . ." indicates this clearly. It is easier for the Civil Servant to advise the committee directly. For what is wanted is not so much the opinion as the grounds for it. It may be that a member of the committee can refute those grounds. A trade union leader may have more accurate information than an official of the Ministry of Labour. A King's Counsel may give a more probable interpretation than the legal adviser to the Home Office. It is useless to ask the Minister to defend "his" views; he can only turn to his adviser to ask for an opinion in three words when it cannot be explained in less than a thousand. Moreover, it may be possible—and this is discussed below—to confront expert testimony with expert testimony.

The policy of the Department in any matter, technical or otherwise, must be the policy which the Minister has approved. It does not follow that Parliament must accept it. Approval of a Government does not involve approval of every proposal which the Government makes.



If it does, Parliament should be prorogued as soon as it has approved the King's speech and thereby voted its confidence in the Government. If such a doctrine is accepted, the legislative process is a waste of time, and all legislation should be by Departmental order.

The Civil Servant should thus advise the committee directly. He would express the views of the Department, and for those views the Minister should be responsible. At the same time, he should not necessarily be the permanent head of the Department. A subordinate officer, the head of a sub-department, may be the most competent to advise on some technical point. He would advise along the lines of departmental policy, and internal conflicts of opinion should be settled by the Minister and not brought to the committee. Thus the standing committee would be a permanent "Departmental Committee," and it is not now uncommon for Civil Servants to give evidence before Royal Commissions and departmental committees.

It is not uncommon to find Departments differing among themselves. The Ministry of Labour and the Ministry of Health have not had the same opinion about the Unemployment Bill of 1933-4. Because the Cabinet has accepted the proposals of the Ministry of Labour, the case of the Ministry of Health has not been put to Parliament. The Cabinet decided the issue as one item among the many items of a long agenda. They had nothing more than memoranda and Ministerial explanation to help them. Probably the Ministry of Health still believes that the Cabinet was wrong; certainly many outside experts believe that they were wrong. The question is not one of ultimate issues; it ought not to be a party question. But because the Government has accepted one view and the Opposition has accepted another, it has become a strictly party question. The debate has become largely artificial, and the House of Commons has, without real consideration of the purely technical issues, approved the method of administration because it is one of the Government's proposals.

But if the committee is to give real consideration to the detailed issues involved, it must be able to hear outside evidence. The recent Unemployment Bill again provides an example. The Association of Municipal Corporations, an entirely non-political body, came to a conclusion strongly antagonistic to the Government's proposals. But they had no direct approach to Parliament. They had to circulate memoranda, to give their opinions to the Press, and to organise a private meeting of members of Parliament. It is surely better that their representatives should directly give evidence to a standing com-

mittee which could give adequate consideration both to their case and to the case for the Ministry of Labour. And there are, probably, other people capable of giving expert evidence on, for example, the financial proposals and the prospects of establishing training centres. The Ministry of Labour has not a monopoly of information on such matters.

This proposal is not without its dangers, however. The practice of "lobbying" has already gone further than the comparatively unbiased person desires. The practice of the present Government and of every other Government which attempts to assist capitalist industry implies subsidies, quotas, and tariffs which enure not only to the advantage of "the country" (whatever that may mean in this context), but also—and indeed more obviously—to particular groups of individuals. Those individuals, too, are economically so important that their political influence is very considerable. The pressure which they can impose upon the members of a capitalist party is always to be feared, and no alteration should be made which might tend to increase it. At the same time, such influence is more to be feared when it flows through secret channels. It is not of the kind which can be effectively used in a committee containing members who are hostile to its exercise. Consequently, I do not think that the present proposal adds to the dangers. If it does anything in this connection, it will bring some of these influences into the light of day. What is more to be feared is that the power of seeking evidence from outside interests will be used as a means of obstruction. The simplest way to prolong the committee stage would be to ask that further evidence be heard. The remedy is for the committee to use its majority to refuse such evidence when tendered. Memoranda of all kinds may be useful; but unless oral evidence is going to produce further facts it should be excluded. The evidence which could be useful to the committee is that of persons who have made a special study of the problems involved in the legislation, and who will obtain no personal advantage or disadvantage from the proposals in the Bill. Above all, evidence by paid "experts," whether expert in the subject-matter or expert in the presentation of a case, should be rigidly excluded. The lawyer, whether he wants to state a case or to examine or cross-examine witnesses, is most clearly not wanted. This applies also to so-called financial experts, paid to state a case on behalf of interested parties.

The production of such evidence will involve a lengthening of the committee stage. But whereas at present the time taken is that of the

Whole House or of a standing committee of seventy-five members, not more than thirty members would be considering any Bill. And whereas the present committee stage is almost wholly ineffective in producing the substantial amendment of detail which any large Bill requires, the result of minute consideration according to the best expert advice available should be very considerably to improve the nature of the legislation. Since its necessity would have to be proved in any case, a further development of the practice of delegated legislation would be possible. . . . Here it is enough to say that the Committee on Ministers' Powers has unanimously recognised the need for delegation. . . .

An objection frequently raised to the practice of sending all Bills to committees "upstairs" is that there is no time for them to sit. At present they sit in the mornings. There seems to be no reason why they should not continue to do so. Those who seek election to Parliament must realise that membership is a full-time occupation, and that if they propose to carry on a business or profession at the same time they can do so only by limiting their opportunities for usefulness as legislators. Also, the abolition of the practice of taking Bills on the floor of the House will leave free a certain time which may possibly be utilised for committee work. The present Standing Orders permit the adjournment of the House for this purpose, though the power has never been exercised. Certain days might be allotted for committee work.

It is also objected that the time of Ministers is so fully occupied that they cannot attend any more committees. This is a criticism of the organisation of the Government and not of Parliamentary procedure, and so is not relevant here. It may be suggested, however, that much greater use should be made of the Parliamentary Secretaries and other junior Ministers. Junior Ministers should be primarily concerned with the legislation promoted by their Departments, and a committee should not normally expect the attendance of heads of Departments.

For reasons already given, the present facilities for the introduction of Bills by private members should be considerably limited. It should be pointed out here, however, that semi-technical measures of the kind which are in fact passed by the House of Commons on the proposal of private members would normally be promoted by members who sit upon the appropriate standing committees. This is one reason for suggesting . . . that the committees should be attached to Depart-

ments and should consider administration as well as legislation. If this suggestion is adopted, the committee would propose legislation as well as consider legislation referred by private members. In this way, a private member who had a real improvement to propose could obtain a discussion in the committee, and, if his proposal were approved, the committee could report to the House that such legislation was desirable. If the Government approved—and under the present system private members' Bills are not passed unless they are approved by the Government—time could then be found for the second reading, the Bill referred to the committee, and the procedure continue as if the original proposal had come from the Government. It would be expected that on semi-technical and non-political Bills approved beforehand by the committee there would generally be no second-reading debate. At present some Bills which are unanimously approved are blessed at length because days are given for them, or because members wish to obstruct the Bill which is next on the paper. Such a waste of time would be avoided, and the opportunities for private members consequently increased. In addition, there would be nothing in the proposed system to prevent a private member who was not a member of the committee from proposing to the committee that legislation on a certain subject was desirable; nor would there be anything to prevent the committee from inviting the member to explain to the committee what he desired, and why.

#### (f) *The Control of Drafting*

Under the present procedure, the drafting of a Government Bill is the responsibility of the office of the Parliamentary Counsel, and the draftsman continues to advise the Minister until it is finally passed. Private members' Bills which are not taken over by the Government do not necessarily receive any expert criticism, either before or after the second reading. If they are adopted by the Government, drafting amendments may be introduced by a Minister on the advice of a Government draftsman. But, whatever the mode of introduction, the control of drafting after the printing of the Bill is vested entirely in the two Houses of Parliament. Drafting amendments have to follow the same procedure as amendments of substance. Consequential amendments have to be moved and assented to individually.

Now the process of making a Bill intelligible and the process of making good substantive law are entirely different. Also, the former raises no political issues, or indeed issues of principle at all. It is a task demanding expertise only. Drafting and consequential amendments

therefore impose upon committees of the House a task for which they are not fitted, in which they are not interested, and on which they have to spend time that they can ill spare.

These considerations suggest that the task of controlling drafting, so far as it is exercised at all, should be taken away from the standing committees and a general control exercised by some other authority. Certain drafting changes, such as the numbering of the clauses, the mention of cross-references, and the addition of headings and marginal notes, are already made without subsequent Parliamentary ratification. It is desirable that drafting amendments and consequential amendments should similarly be made without taking up Parliamentary time.

The most appropriate authority for this purpose is the drafting office. But Parliament may not be willing to delegate such a function to permanent officials. Also, there are advantages to be gained from having a more authoritative body. For it is desirable for other reasons to obtain a general supervision over the statute book for the production of consolidating measures, the codifying of unwritten law, and the development of a new technique of drafting. These functions should clearly be performed by a committee responsible to Parliament, though not necessarily composed of, or containing, members of Parliament. If members can be found willing to serve, they would do valuable though unspectacular work, and would safeguard the legislative privileges of Parliament. But there should be, in addition, a group of experts, including the two Parliamentary Counsel and a couple of lawyers, and, if possible, a High Court judge.

Also, it would be possible for amendments to be moved in a different way. Instead of selecting the actual words of an amendment, a member could move "That it be an instruction to the Drafting Committee to insert words providing that . . ." The Drafting Committee could then make the necessary amendments. It could also insert consequential provisions, such as those prescribing penalties providing for legal proceedings, transferring property, compensating officers, and so on. Possibly the House would not delegate these powers, but would insist on their being reported to the House. Even so, approval would be formal in most cases, and the time of the standing committee would thus be saved.

Further, the Drafting Committee would supervise the drafting of Bills which had been "read a second time" on resolutions, as suggested *ante*, pp. 80-83.

By these means a flexible system of drafting control would be obtained. Much of the time of the standing committees would be saved, Bills would be better drafted, and a better drafting technique gradually developed.

(g) *Committee Procedure*

If the above proposals are accepted, the standing committees will be more important than they are now, and attention must be paid to their procedure. Suggestions have been made for giving them paid chairmen. But this seems an unnecessary expense, and it would add considerably to the number of Government supporters with official posts who voted for the Government without exercising any real independent judgment. Suggestions have also been made to the effect that, if the Departmental allocation of standing committees is accepted, the Parliamentary Secretary of the Department should act as chairman. But such a solution would impair the independence of the committee. It is far better that the Parliamentary Secretary or his equivalent should be the chief governmental adviser of the committee. On the other hand, the committee should not elect its own chairman, given the habit of committees to appoint as chairmen their oldest and most venerable members. The function of appointing should therefore be left to the Committee of Selection. It was said in evidence before the Select Committee that there was a shortage of competent chairmen. It is, however, inconceivable that there are not enough competent chairmen among the 615 members outside the sixty or seventy members who hold official posts. Many of them have local government experience or other experience of committee work. It should be noticed that if the proposals in this book are accepted, the chairman of a standing committee will occupy a position of very great political importance; there ought in consequence to be real competition for the post.

With smaller committees whose members need not concern themselves with drafting, committee procedure should be very considerably quickened. Nevertheless, unnecessarily long debates, and even deliberate obstruction, will still be possible. Consequently, while methods of restricting debate should not be used so frequently as in Committee of the Whole House, they should be in existence to be used if and when necessary. Any member should have the right to move a closure motion, and the chairman should have power to accept it whenever he considered that any clause or any suggested amend-

ment had been adequately discussed. A vote of the committee should of course be taken on any closure motion accepted by the chairman. Also, the chairman should have the same "kangaroo" powers as the chairman of a Committee of the Whole House, and these powers should be constantly used to select those amendments which raise most effectively the point in issue and to exclude mere drafting amendments if a special Drafting Committee has been set up. If there is no such committee, and the standing committee has itself to supervise drafting, "kangaroo" powers are all the more necessary in order to get the Bill into its most intelligible form. At present the normal procedure is for the Minister to accept the principle of the amendment, and to undertake to propose an appropriate wording on the report stage. Such a method involves taking the time of the House, and is to be deprecated.

"Kangaroo" powers are also used to limit debate by cutting out overlapping amendments. . . . Obstruction should be rare where little publicity is to be obtained for it, and the practice of working together should rub off some of the sharp edges of party conflict. But where obstruction does arise—as, for instance, where socialising measures propose to take property compulsorily—"kangaroo" powers will be necessary. The only objection ever raised to the grant of such powers to chairmen of standing committees is that they cannot be trusted to use them properly. Such an objection is of little force; and it will have still less force under a system in which chairmen occupy a position not much less important than that of a junior Minister.

The only really effective method of limiting endless debate is the "guillotine." It is, however, a dangerous machine for those who use it as well as for those who suffer under it. Limitation of debate can so easily become the stifling of debate, and debate is of the essence of Parliamentary democracy. It is quite certain that a committee cannot be trusted to formulate and apply a guillotine motion to itself. On the other hand, it is not unreasonable for the House to ask that a Bill shall be reported on a certain date, and to impose a guillotine in order to see that the various parts of the Bill are adequately covered. Nor is it unreasonable for a committee which finds its proceedings being held up by obstruction to request the House to grant it a guillotine motion.

The guillotine should not be granted, therefore, except by a resolution of the House. And it might cover all stages of the Bill after the second reading. Proposals have been made for delegating to a special committee the task of allocating the time. There seems little advantage

in this procedure. The Government must determine the total time allocated in order to get its legislative programme completed. The details can be left for discussion between the whips' offices, as at present. A formal committee would not be any more effective than such informal discussions, and would have the disadvantage of appearing to cast upon the Opposition some of the responsibility for the guillotine motion. There is need, however, for more frequent discussions between the whips, and it is suggested that the whips should consult the chairman of the committee and two or three members with special knowledge of the problems involved in the legislation. The whips themselves do not necessarily know anything about the real issues which underlie the legislation, and they could make a more effective allocation of time if they understood more clearly the points on which debate would probably take longest. It has to be realised in this connection that obstruction most frequently comes not from the official Opposition, but from professional obstructionists, woolly-minded talkers, and representatives of special interests. Parliament cannot prevent the constituencies from returning such members—especially when they are rich and are able to buy safe seats by contributions to local charities and to the local party organisation—but at least the Government and the Opposition can combine to prevent the time of the ordinary member from being wasted in lengthy and futile discussion. Obstruction by an Opposition party as such is of a different nature, and is a justifiable use of the Parliamentary machine. The Government must use its majority to overcome it with the usual political results.

Also, the present system of applying the guillotine, as the debates on the Unemployment Bill have shown, is too inelastic. For any measure of such complication and raising such controversial issues, there should be "free days" unallocated to particular parts of the Bill, but available for the discussion of issues for which there has been inadequate time. A supplementary guillotine motion could then allocate these free days. The time-table, too, should not necessarily be regarded as indicating the time to be spent on particular clauses. If the debate on any clause can be brought to an end by the acceptance of closure motions or otherwise before the end of the allocated time, this should be done, in order to allow more time for the discussion of other parts of the Bill. The chairman should not consider that, because the House has allocated time, he should not use his "kangaroo" and



closure powers in exactly the same way—subject to the maximum provided by the guillotine—as he would if there were no guillotine motion. In particular, he should be ready to accept a closure motion whenever it was obvious that debate was being prolonged on a particular clause in order to burke discussion of a subsequent clause or to enable the Opposition to say that the Government had deliberately prevented discussion of that subsequent clause.

#### *(h) Report and Third Reading*

The report stage of a Bill is taken on the floor of the House, and provides a further opportunity for effecting amendments. The House is no more appropriate as an amending body at this stage than it is at the committee stage. But there are difficulties involved in combining the report stage and the third reading and forbidding amendments. For the Bill as amended by the standing committee may well prove so unacceptable to the House as a whole that they may be prepared to reject it; whereas a few amendments may be sufficient to make it acceptable.

An alternative is to permit only a motion for referring back to the committee with instructions to amend. But such a rule would save no time: for the debate would be on the motion to refer back, and so would occupy the time of the House as fully as the amendments themselves.

Certain of the changes proposed . . . would, however, greatly reduce the importance of the report stage. In the first place, the greater flexibility of small committee procedure would permit of the Bill being reported in a more finished state. A Minister would not accept the principle of an amendment and undertake to submit a form of words at the report stage. Nor would an amendment be withdrawn in committee in order that the Minister might consider whether it could be accepted on report. In the second place, drafting amendments would not be moved on report, since the task of altering the drafting would be left to the Drafting Committee.

The report stage should thus be comparatively short. Few Bills should occupy more than a single day for report and third reading. And these should be taken together. It is unnecessary to move the clauses in chunks, with a possible division on each. The motion should be "That the Bill as reported be read a third time." To that would be moved the various amendments. After these had been accepted or disposed of, the motion "That the Bill as reported (and amended) be read a third time" would be debated. This combination would

abolish the present practice of having a general debate on the operative clauses on report, which is repeated on the Bill as a whole on the third reading.

Since one day should normally be ample for report and third reading, a rule to that effect should be incorporated in Standing Orders. It should be provided that, where a Bill was reported to the House, at the usual hour for adjourning the debate should automatically end and the question under discussion put to the vote, that all Government amendments should be put to the vote without further debate, that all other amendments not already moved should be deemed to be rejected, and that the question that the Bill be read a third time should be put to the vote without further debate.

There would, of course, be nothing to prevent the Government from moving the "suspension of the eleven o'clock rule" or from moving the suspension of the Standing Orders so as to allow the adjournment of the debate at the end of the sitting and the submission of the question to the House on another day.

## VII

W. IVOR JENNINGS

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### *The Technique of Opposition\**

THE notion that the House of Commons "controls" the Cabinet may perhaps be found in some of the books, but it has long been demonstrated to be false in fact. It assumes that the members are independent and unbiased, able and willing to consider the government's proposals on their merits, without personal interest or preconceived ideas. The notion, that is, ignores the party system and ignores, too, the divergences of interest and social philosophy that underly the party system. It is more nearly true to say that the Government "controls" the House of Commons. It determines what the House shall discuss and what it shall approve or disapprove. The government majority comes to heel at the crack of the whip, and it rarely happens that many of its members dare to go off on a frolic of their own. In the present House the Government possesses such an enormous majority that some independence of action would hardly affect the result of a division. Yet Sir Herbert Samuel has called it a "rubber-stamp Parliament"; and the ultra-conservatives have described their fellow members by the expressive but derisive title of "Yes, Ma'am." Conservative majorities are admittedly docile and, as some say, unintelligent. But the smaller the majority the greater risk of voting against the government and the greater the incentive to obey orders.

It is therefore not surprising that, since the strict party organisation was established by Disraeli and Joseph Chamberlain, defeats of the government on important issues have been rare. From 1835 to 1839, both inclusive, the Whig Government was defeated on 53 occasions in the House of Commons. Party discipline has since become stricter, party alignments are more precise, and the dependence of the govern-

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ment on legislation is much greater. No government with a majority would accept defeat ten times during a session. Nearly every vote is a vote of confidence, and a defeat involves either a dissolution or the resignation of the government.

It is true that minority governments, like the Labour Government of 1924 and 1929 to 1931, have suffered defeat and swallowed their pride. But even then examples were rare; and, generally speaking, a government expects and receives support, no matter how reluctantly that support may be given. Moreover, the overthrow of a government by a parliamentary vote is rare. A government may be defeated by the defection of some of its supporters, like the Liberal Government of 1886 and the Coalition Government of 1922. A minority government may be defeated by the defection of the third party, like the Labour Government of 1924. But normally, a government is turned out not by a vote in Parliament, but by a transfer of votes at a general election. Effective opposition in this sense has been transferred to the press and to the constituencies.

The reasons are not far to seek. Few members possess a large personal following in their constituencies. The "carpet-bagger" used to be an object of derision. Now, nearly all members are "carpet-baggers" or, more strictly, week-enders. Residence in a constituency, and even close association with a constituency, are regarded as disadvantages. The member's chief merit is his party label. A local politician creates enemies as well as friends, and his enemies are likely to be those with whom he has been most closely associated, the influential local organisers. The ideal member is, in one of those constituencies which can be "purchased" in ways not coming within the Corrupt and Illegal Practices Acts, the richest member; and in a constituency which has to be "nursed," he is the member who can appear most frequently, and on his best behaviour, at meetings and social functions. The electors vote for his label, but they insist that the label, or the cash, shall be frequently exhibited. The local politician either remains at home, like Salvidge, to organise for others, or selects an accessible but not too proximate constituency. "After all," a local party secretary once said to me, "you cannot expect people to vote for a man who is known to everybody in the constituency as 'Bert.'"

If, then, electors vote for the label, the label is the member's most precious possession. If he forfeits the confidence of his leaders, he will lose his seat; and if he belongs to the majority his leaders are the Government. Even a politician of outstanding merit may wreck his

ambitions by too free display of independence, unless he is prepared to go into opposition and the opposition has need of him. When Lord Randolph Churchill "forgot Goschen" he committed political *felo de se*. The Liberal Unionist leaders paved their way to high office, but only because Disraeli had proved to his party (more or less posthumously) that there was a permanent Liberal majority in the country which could be effectively destroyed only by the absorption of the right wing into the Conservative Party. Joseph Chamberlain, too, "came back," though he forfeited his chance of becoming Prime Minister. Most of his followers were extinguished. To descend from the almost sublime to the almost ridiculous, Sir Oswald Mosley's final rejection of "party" sent him into the wilderness to lead the uncivilised.

The result is that party defections are rare. Indeed, if they do lead to the defeat of the government they are, even from the point of view of the rebels, a catastrophe. They necessarily enure to the benefit of the opposition, for they not only break up the parliamentary party, they also break up the party organisation in the constituencies. Above all, they produce a confusion in the minds of the electors that induces many of the large mass of unattached voters who really decide the fates of governments to go over to the other side. The break-up of the Liberal Party in 1886 produced eighteen years of Conservative rule, broken only by the period of the short and uneasy Liberal Administration of 1892-94. The raising of the tariff issue in the Conservative Government of 1901-1906 was one of the causes of the great debacle of 1906. Even the break-up of the Coalition in 1922, which accorded with the natural order of party politics, had as one of its consequences the Labour Government of 1924.

Thus, the chance of breaking up the government is slight. The opposition continues to oppose, but it rarely expects to defeat the government. It knows that it will be voted down. It is excited if the government has its majority substantially reduced on an important measure. If it defeated the government it would not be merely wildly excited but very much surprised. Its tactics are not really directed to this end. Opposition members debate the government's measures and go into the division lobbies against them not because they expect to be successful but because they consider that a formal protest is necessary.

Their real appeal is not to the members on the benches opposite

(or, in most cases, in the library, the smoke-room, or the dining-room), but to public opinion outside. They rarely expect their arguments to influence votes. But if they do they know that their object will be achieved not because they will change votes in the House, but because they might change votes at the next election. The ordinary government member does not consider whether he can defend his vote to his conscience, but whether he can defend it to his constituents. If he thinks that there will be any difficulty about it, he will vote with the government, but he will make it known through the whips and through his other channels of communication with the Cabinet that on this particular point it is desirable to compromise.

But the appeal to government members is not the essential function of parliamentary opposition. Primarily, a debate is propaganda. It is an appeal to the reason or to the prejudices of sections of the electorate to vote against the government candidates at the next election. Every opinion lost to the government is a gain to the opposition; every opinion gained by the opposition renders more likely its return to office. Opposition is intensified as a Parliament draws to an end. But opinions are long in the formulation, and the process of educating the electorate for the next election begins as soon as an election is over. It is now commonly held that if Gladstone could have raised Home Rule in opposition he could have carried the great bulk of the Liberal Party with him in 1886 as he carried with him the purged party of 1892. He failed in 1886, in spite of the magic of his personal appeal, because the electorate was suddenly faced with a momentous decision. One of the reasons for the great liberal success of 1906 was that they had been in opposition for so long that they had been able to convert a large section of the electorate.

The debates are not of fundamental importance for this purpose. They are usually not well reported in the newspapers, and even the newspaper reports are not studied with that concentration which is necessary to produce conviction. They are read, if they are read at all, over breakfast, in trams, trains and omnibuses, and at odd moments. No matter how partially they are written or sub-edited something of the case for the other side is allowed to appear. The mere fact that there is an opposition may lead a few to think that the arguments are not all on the one side, and so give rise to a habit of criticism. But the fact that an argument is capable of answer, with or without relevancy or cogency, usually tends to confirm the reader in his pre-

conceived opinion, especially if he is intellectually lazy. The case made by the opposition carries conviction, but rarely through newspaper reports. It is carried round the country through political meetings addressed by the leaders. But the main streams of argument proceed through the local party organisation and the keen members of those bodies. Constant publicity is valuable, but primarily because it reaches the individual through individuals. The personal argument is supported and emphasised through published facts and arguments. But it is the personal argument that is essential.

The direct influence of the parliamentary party in this system of propaganda is small. The member of Parliament has some kudos which increases his platform attraction. He is able, by his interventions in debate, to add to the constant stream of party publicity. He can secure both immediate propaganda and valuable ammunition for use elsewhere by asking inconvenient questions and by compelling the government to explain its actions. These functions are important, but they can easily be over-estimated. The fundamentally important fact is that the existence of the opposition is constant and irrefutable evidence that the government's point of view is not necessarily the only or the correct point of view, and that an alternative government is possible. The main function of the opposition is to prepare itself to take office.

All this might suggest that legislation introduced by the government must necessarily pass in the form in which it is introduced. Since the government can rarely be defeated it can insist on its own proposals. The opposition, it may be said, can do nothing more than make a political demonstration (unless, of course, the opposition is conservative, when it can use its permanent majority in the House of Lords). Yet a slight acquaintance with parliamentary procedure during the past fifty years is sufficient to indicate that in spite of the stricter party organisation, the rigidity of modern procedure, and the extended powers of control possessed by the government, bills are now amended much more frequently. The custom of regarding the House of Commons as a legislative body concerned with details is a new one. Neither Sir Robert Peel nor Lord John Russell, as leaders of the opposition, considered that it was their function to suggest minor amendments. Disraeli followed their practice, and though Gladstone tended to see principles in details, it is roughly true to say that the modern practice was introduced in the present century. During the last century nearly all debates were of the second reading type, and

amendments were selected so as to raise questions of principle. The details were left to the government. Parliament was concerned with "politics" or general issues.

In part, the change was due, like so many changes in House of Commons technique, to the Irish Nationalist Party. They opposed for the sake of obstruction, and therefore argued about details as well as about principles. When tempers became exacerbated over Home Rule the "official" opposition tended to follow the same tactics. Partly, too, the change has been due to the extension of the electorate and the growth of the idea that parliamentary work is a full time occupation. The member must speak as frequently as possible in order to show his assiduity; and, above all, he must vote in as many divisions as he can. There is no statistical "proof" of his energy except the division lists, and the number of divisions has consequently increased enormously. The opposition is no longer content to divide on major principles and after three or four days' debate. There are three or four divisions every evening when the House is in committee. Members vote whether they listen to the debates or not, and it is the duty of the whips to keep them somewhere in the building, so that they can be accessible when the division bell rings.

But these are subsidiary reasons. The real cause is the change in the nature of the legislation. It is no longer "political" in the nineteenth century sense. It is economic. It closely regulates trade and industry. It provides large social services. The result has been a complete change in the status of the member of Parliament. He still "represents" his constituency, but his constituency has altered. It is no longer a small collection of politically-minded members of the middle class, of whom a majority shares his political prejudices. It is composed of employers, professional people, and workers, with special economic interests. These constituents are concerned to maximise their benefits and to minimise their obligations. The modern Burke may continue his interest in the American (or other) colonies, in economical reform, and in the French (or other) Revolution. He may be an expert on foreign or imperial affairs, on India, on law reform, or on anything else which suits the political views of his majority. But primarily the constituents regard these matters as his hobbies. The member for a Bristol constituency is much more concerned to see that the industries of Bristol and their employees do not get special obligations imposed upon them but do get, if that is possible, special benefits.

Nor is this all. Most members represent not only their constituencies,



but also some other "interests." The member may be the representative of the brewers, of the Greyhound Racing Association, a trade union, the Rural District Councils Association, the Mental Welfare Association, the co-operative societies, or some other social or economic "interest." In a few cases he receives a contribution towards his election expenses. In others, he has himself an interest, pecuniary or otherwise, in their prosperity. In yet other cases, he is genuinely concerned as a matter of public policy in the aspects of social welfare in which they are interested.

Consequently, when a bill is introduced the average member will consider it from several points of view. As the holder of a public office he will consider it from the point of view of the people as a whole, and in the light of his political opinions or his special hobby. As a member for a Lancashire constituency, he will consult with his most prominent local supporters. As a representative of the Cotton Industry he will consult his friends among the cotton manufacturers and the officials of their associations, or, alternatively, the officials of the cotton operatives' trade unions. As the representative of, say, the Mental Welfare Association, he will, if the bill be appropriate, consult with the committee. As a result of these various considerations he will propose amendments. Some he will think of for himself. Others will be suggested for him. He will, if it is considered necessary, receive a "brief" from which to argue.

The amendments thus produced may create discussion on the floor of the House or in committee "upstairs." But this is not the most frequent and effective method of amendment. He knows perfectly well that no amendment will be made unless he can persuade the minister in charge of the bill to accept it. Accordingly, his first step is to make representations to the minister or to his permanent advisers. The great mass of accepted amendments are government amendments, and many of them are suggested by "interests," either directly to the minister or indirectly through a Member of Parliament. Amendments appear on the agenda paper only where less direct methods have proved or are likely to prove ineffective. But such amendments are of two kinds. Some are placed on the paper merely as party propaganda. It is expected that they will be defeated, but their discussion is part of the process of persuading the electorate to vote for or against government candidates at the next election. Others are moved because it is just possible that they may be accepted under pressure.

The government has, as we assume, a majority. Under modern conditions it is unlikely to be defeated. But the process of dragooning a majority cannot be carried too frequently or too far. The government's supporters will not vote against it, but they may become restive, and a restive majority creates serious problems for the whips. If a general unrest is created the practice of staying away from divisions will spread. Disobedience, like crime, is infectious. It may lead, in the long run, to a split in the party, and thence, as experience has shown to be likely, to long years of recrimination and futility in opposition. In any case, divided counsels are bad tactics from the electioneering point of view. They destroy the enthusiasm with which the local parties work. Consequently, though parliamentary discussion will rarely result in a defeat of the government, it may result in a decision by the minister to give way to pressure from his own party, and to accept an amendment which he was disposed to reject.

It must be admitted, however, that examples are rare and exceptional. Most members do not listen to debates, and those who do listen generally do so with closed minds. More frequently the pressure upon government supporters comes from public opinion outside. Members in touch with industrial constituencies, and especially members with doubtful seats, are very susceptible to changes of outside opinion. The changed attitude of the present government to public works must be traced to the pressure of opinion in the industrial areas, not to changes in Treasury opinions. Any anxiety to forward a peace policy which the government exhibits must be traced to a strong anti-war pressure from the constituencies. The wholesale amendments to the Incitement to Disaffection Bill were due almost entirely to outside opinion.

Ordinary political opposition helps to mould and develop this outside opinion. But, as we have seen, the process is slow. Moreover, it depends very considerably on changes of economic conditions. It cannot, therefore, be very effective in securing changes in legislation actually before the House. The examples of the government's peace policy and of the "Sedition Bill" are for this purpose very instructive. There is a strong antipathy to war and to dictatorship among a substantial section of the population. Naturally, much of it is associated with the liberal and labour parties. But it is largely independent of political sympathies; and, indeed, party propaganda on the other side and the example of Russia have made many people believe that one section, at least, of the Labour Party is inclined to a kind of dictator-

ship. There is an opinion in favour of pacifism and liberty which is not, so to speak, politically harnessed. It derives from a long historical tradition and from the experience of recent years. It is therefore possible to rouse a public opinion against any measure or against any policy which can be shown to tend to war or to infringements of essential liberties.

Parliamentary opposition provides a focus for outside activity. It secures discussion on the questions which perturb public opinion. But essentially the task of the opponent is to rouse public opinion outside and to make it vocal. For this purpose an appeal to party prejudices is a disadvantage. The electors are suspicious of party motives. They have, for the time being, made up their minds on the party issues. But the appeal to reason does not always fail. It is possible to demonstrate that legislation contains dangerous proposals. Democracy, in spite of all that has been said on the other side, does not depend entirely upon an appeal to economic interests.

The Incitement to Disaffection Bill was an example of supreme importance. It seems to have slipped through the Cabinet almost unnoticed. It was introduced without previous fuss and bother. But before it was debated at all there was strenuous opposition to it from outside, and the Attorney-General who, to his evident disgust, was left in charge of the bill, found it politic to begin by announcing "concessions." Subsequent parliamentary opposition was unusually effective, considering the enormous and docile majority which the government possessed. The bill was radically amended. When it became law it was still in the opinion of many fundamentally obnoxious, but undoubtedly its worst provisions had been eradicated. The presumption of guilt wherever a person was found in possession of documents capable of being used to seduce the troops had been changed into the usual presumption of innocence. The right to trial by jury was established. The proposed offence of doing acts preparatory to the commission of an offence was dropped. The right of a single justice of the peace to issue a search warrant had been transferred to a judge in Chambers. Qualifications of various kinds had been inserted.

These great changes were effected without a single defeat of the Government, although the committee work was done "upstairs," and defeats in such conditions are not regarded as involving the fate of the Government. Every proposal upon which the Government insisted was carried by a large majority, and very few supporters of the

Government could be induced to go into the Opposition lobby. In other words, it was not Parliament that amended the Bill, but public opinion. In this instance, there was a directing energy which compelled attention to the dangers of the Bill. The Council for Civil Liberties had been formed not long before the publication of the Bill for the express purpose of fighting invasions of liberty. Its composition, as might be expected, showed a bias towards the left. But it contained members from all parties, and it received support from persons eminent in literature, in science, in law, and in the Church, who were not associated with the opposition parties. Thus it had no axe, party or otherwise, to grind, and it was admirably fitted to lead an agitation which would have lost most of its effectiveness if it had been conducted on political platforms. It accepted the task, and sufficient recognition has not been given to the great work which its energetic secretary performed. By numerous public meetings, by letters and communications to the press, by distributing leaflets, by organising a petition to Parliament, by lobbying members of Parliament, by conducting controversy with the Prime Minister and the Attorney-General, and by other means, it kept the Bill in the news and persuaded a substantial section of the electors that essential liberties were at stake. Though the Government complained of a "campaign of misrepresentation," the discussion throughout was on a high level. Wild and fantastic statements were not made; nearly every interpretation of the Bill expressed in public had behind it a formal opinion of a committee of lawyers.

This agitation was supported, of course, by the parallel political propaganda of the Labour and Liberal Parties. But political protagonists for the most part had the intelligence to recognise that their case was strengthened if they did not rely too strongly on party prejudices. Moreover, it was obviously the non-political agitation which effectively moved opinion. It was found at every stage of the parliamentary proceedings that outside opinion had hardened. The Attorney-General was compelled to give way on some of the most important parts of the Bill. Already on the second reading he found it politic to announce concessions. The most valuable amendment of all, which deprived the search warrant of much of its danger, did not come until the report stage. It is significant that no amendment at all was made in the House of Lords, where public opinion has no influence. A non-political agitation lasting for six months had aroused public opinion, had come to the aid of normal political opposition,

and had compelled a Government with an enormous docile majority to give way. Political opposition can rarely effect what the non-political agitation succeeded in producing, the emasculation of a government measure.

Nor must the indirect effects be forgotten. If it is shown that a government with an unprecedented majority can find itself in difficulties when it seeks to infringe essential liberties, it is unlikely that a government with a smaller majority will dare to make the attempt. The Government saved its "prestige" by passing the Bill, but it weakened its authority, as even *The Times* admitted. A government with a real parliamentary opposition will be more careful in its proposals.

The result is encouraging to the friends of democracy. It has been shown that the appeal to reason can be successful. It has been shown that public opinion can be roused to defend a prospective and (to anybody but a lawyer) largely hypothetical interference with democratic liberties. If an insidious attack upon democracy can be rendered almost ineffective, it becomes obvious that a direct and immediate attack can be repelled. A Parliament controlled by a majority is, temporarily, dictatorial. But so long as the existence of an opposition makes a substitute government possible, an appeal to a majority outside will compel a parliamentary majority to give way. Moreover, the appeal can be effective if it is an appeal to reason, and not a mere appeal to economic interests. The example proves, too, that in matters of political liberty opposition cannot be left to the political parties and to the usual political channels. There must be an appeal directed not towards general political opposition, but to the specific evils of specific proposals. This does not mean that party opposition is not essential. It is the existence of the opposition that makes the appeal possible. It means only that some sections of opinion are sceptical of politicians' propaganda, and that political opposition needs to be reinforced.

## VIII

JOHN A. PERKINS

### *Steps Toward Electoral Reform in Great Britain\**

WHILE fighting aggressively for democracy abroad, Great Britain has recently moved toward further democratization of the electoral process at home. The passage of the new Parliamentary registration bill in the fall of 1943 makes way for a system of continuous registration so that the vote of the shifting population will be reflected in the next election,<sup>1</sup> and an amendment to it in July 1944 makes this possible also for intermittent by-elections.<sup>2</sup> More important was the enactment in October 1944 of the House of Commons (Redistribution of Seats) Bill with its provision for periodic redistribution of seats by standing commissions.<sup>3</sup> Both continuous registration and periodic redistribution are long steps toward the goal, stated by the Home Secretary, "that each vote recorded shall as far as possible command an equal share of representation in the House of Commons."

The new registration law was based on the report of a Departmental Committee on Electoral Machinery (November 1942). This Committee also suggested the use of boundary commissions as provided in the redistribution law to carry out that process. However, the statement of principles of redistribution derived from the recommendations of a Speaker's Conference on Electoral Reform and Redistribution (May 1944). Other notable suggestions on matters of electoral reform were made by this Conference. While they have not yet been incorporated into law, they point the way for future developments.

The enactment of what amounts to a Sixth Reform Bill, albeit

\**Political Science Quarterly*, vol. 57, 1942, pp. 65-78. Reprinted by kind permission of the publishers.

<sup>1</sup> 6 and 7 Geo. 6, c. 48.

<sup>2</sup> 7 and 8 Geo. 6, c. 24.

<sup>3</sup> H.C. Bill, c. 44, 1944.

piecemeal, and the studies which have led to it are the matters of real moment to be discussed here.

### *Committee on Electoral Machinery*

Agitation for a revised register stemmed first from the desire to have by-elections conducted on an up-to-date list of electors, and second from the need to be prepared for the next and not too distant General Election.<sup>4</sup> Over one third of the present members of Parliament, which was originally elected in 1935, have been replaced by representatives chosen at by-elections. During the past five years these replacements have been elected by that dwindling proportion of the electorate which continued eligible to vote under registration compiled in 1939. That system of registration was keyed to a relatively static population and even if it had not been suspended the first year of the war, it would have inadequately reflected the present fluid state of the inhabitants. This very wartime fluidity naturally gave rise to greater, though by no means new, demands for redistribution of Parliamentary seats. The present arrangements date from 1917, making revision already long overdue before the population movements of wartime got under way.

A Departmental Committee on Electoral Machinery was established in January 1942 by the Home Secretary (Herbert Morrison) and the Secretary of State for Scotland (Thomas Johnston). Appointment of the sixteen-man committee was made to give fair representation to various groups: Parliament, suitable electoral registration officers, Home Office, Scottish Office, and the national agents of the various political parties. Sir Sylvanus P. Vivian, Registrar-General since 1921, brought great experience to the chairmanship since all forms of population statistics, including local populations and electorates, emanate from his office.

The Committee was directed to inquire into matters concerning electoral registration and the redistribution of seats. Meeting eighteen times throughout 1942, the Committee made its report in mid-November of that year.<sup>5</sup> In the words of the Home Secretary, "They presented the House and the country with an admirable and valuable report." Part I put forward their recommendations for a system of continuous registration which would be responsive to a constant change of residence on the part of the electors.

<sup>4</sup> In November 1944, Prime Minister Churchill stated that the termination of the war against Nazidom will fix the date of the next *General Election*.

<sup>5</sup> Cmd. 6408, December 1942.

In support of its position, the Committee pointed out that in the first month of the war (September 1939) two and one-quarter million people or five per cent of the total population left their homes in Great Britain. During the latter half of 1940, when aerial bombardment was at its height, the removals between different local administrative areas were more than six per cent per quarter, involving nearly three million changes in the last quarter of 1940, and in 1942 they continued at a level of over a million per quarter. After the war the majority of evacuated persons will return to their original homes or localities, unless delayed or prevented by housing shortage or difficulties in obtaining local employment. The rate of the counter-movement may be even greater than the exodus during the war period. Since it now appears that a General Election cannot be postponed until after stable conditions arrive, the registration system must be attuned to mobility.

In contrast to the existing periodic system which the Committee found could not be adapted to the holding of a General Election on relatively short notice, the continuous register could at any point of time represent the electorate qualified to vote. Whenever a General Election is announced, this register would be "frozen" and made available to candidates, their agents, and others concerned.

The register would be in three parts: civilian residence, armed forces and business premises. The civilian register would be constructed by the local Electoral Registration Officer from the records of National Registration which were created at the beginning of the war for purposes like food rationing.\* The lists would be modified by arrivals, departures, deaths, and attainment of adult age, notices of which, having first been used for National Registration purposes, would then be passed on to the local electoral officer. It was proposed that civilian residence qualifications be reduced to two months to be completed at any time of the year. A further protection to that part of the population in a condition of flux was the proposal that no elector could be removed from the register of one constituency without being previously entered on the register of another. It was recommended that the register of the armed forces (including merchant seaman and warworkers abroad) be compiled from declarations made by men in the forces and transmitted to the electoral officers of their home constituencies. Voting would be by proxy for those outside the country, but for those in the United Kingdom there would be choice

\* 2 and 3 Geo. 6, c. 91.



of proxy, post, or personally if that were possible. The business register would be constructed from claims on the part of those entitled to be on it. This initial application would be good for a year; after that application forms would be sent to electors already possessing the business premises qualification.

### *Registration Act*

Parliament was insistent on hustling electoral revision along. Six months of prodding elapsed before the government introduced a bill based on that half of the Report dealing with registration. Prime Minister Churchill's broadcast bid for continuance of all-party government after the war to carry through a Four Years' Plan aiming at objectives on which party opinions might largely coincide may explain the reluctance of the government to introduce a bill to facilitate the holding of an early General Election. On at least seven occasions between that broadcast in March and early July 1943, when the bill was introduced, the government was questioned on its progress in studying the Report. Concern was manifest over the inadequacy of registers for by-elections and the actual disfranchisement, under the present system, of those who had reached the age of twenty-one since 1939 but were not able to register. Young people, it was maintained, "fighting and working to save the country" felt detached from a Parliament which they had no voice in selecting.

The Parliament (Elections and Meeting) Bill was finally brought up for passage in October 1943. When the more discontented wanted to debate the justice of the plural or business vote and lowering the age qualifications, Mr. Morrison explained that he was not seeking to alter the franchise, but was providing for an efficient and effective system of registration despite wartime difficulties.<sup>1</sup> Amended somewhat in its details, the bill was passed on November 5, 1943, in essentially the form proposed by the Committee in its Report as described above.<sup>2</sup> Although as Mr. Morrison put it, "Most of us are agreed that it would not be particularly creditable if we were driven to a General Election during the war," this Act made it administratively practicable "if the House could not live with the Government or if the Government could not live with the House."

This law had not been put into operation by the middle of June 1944, and the Home Secretary when questioned explained that electoral registration officers were unable to cope with the work entailed

<sup>1</sup> 393 H.C. Deb. 5s (1943), p. 58.

<sup>2</sup> 6 and 7 Geo. 6, c. 48.

in keeping up the civilian registers owing to wartime labor shortages in the local registration offices. At the same time he introduced an amendment to the original act. This new Parliamentary Electors (Wartime Registration) Act suspended the two months' residence provision and permitted a person to be on the civilian electoral register if he was listed on the national register as residing in the constituency on the qualifying date.\* The qualifying date under this amendment was put back by a month to insure that newcomers to a constituency will have been resident for not less than a month before the date on which an election is initiated. While the business premises register was likewise simplified, that of the armed forces remained unchanged.<sup>16</sup> A further provision directed the Home Secretary to bring this temporary measure, intended for by-elections only, to an end as soon as sufficient staff and facilities are available for the satisfactory operation of the 1913 Act. In no case is it to be in effect after December 31, 1945. A requirement more fundamental even than registration to a representative system is the determination of local areas as suitable constituencies.

#### *Suggested Machinery for Redistribution*

Part II of the Report of the Committee on Electoral Machinery dealt with the problem of redistribution of Parliamentary seats. Instead of this having been recognized as a normal and regular part of the Parliamentary system, experience shows that it has taken a positive upheaval in the past to secure any adjustment of constituencies. This is the more anomalous since, if the redistribution procedure of 1917-18 may serve as an example, it involves nothing beyond the scope of an ordinary administrative undertaking guided by statutory provisions.

The apportionment of the wartime Parliament presented a picture of great maldistribution. The Registrar-General prepared statistics of actual constituency electorates in 1939 and estimated them in 1941. Using the toleration limits of 30 per cent below the quota and 70 per cent above as suggested by the Speaker's Conference of 1917, the Committee found that in 1939, 119 constituency electorates in Great Britain had ceased to discharge, within acceptable margins of approximation, their function of returning "an equal share of representation." Of these, 87 were reduced to a point no longer justifying, according

\* 7 and 8 Geo 6, c. 24.

<sup>16</sup> Dissatisfaction with the arrangements for registering service voters was voiced in the debates on this bill, and the Speaker's Conference in its last report urged the introduction of automatic registration. It further asked the government to consider arranging postal votes by service voters overseas.

to those criteria, their present representation, while the remaining 32 had increased to such an extent that their representation should be doubled, or in some cases trebled or quadrupled. By 1941 the maldistribution was even more extreme when 164 constituency electorates no longer satisfied the standards; 128 reached that condition by diminution and 36 by increases. Specific examples of gross inequality are Hendon with nearly 210,000 voters returning only one member and Camberwell with about 160,000 voters returning four.

For the purpose of preparing concrete redistribution proposals, the Committee suggested an administrative body capable of functioning without the necessity for a Parliamentary initiative of rare and uncertain occurrence, and recommended, therefore, a statutory standing commission. The commission would then be able to review the state of constituencies and propose redistribution, where necessary, during the normal life (five years) of every Parliament. It would be composed of representatives of the Home Office which has general functions in all electoral matters, the Ministry of Health which deals with changes in local government boundaries, together with the Registrar-General and the Director General of the Ordnance Survey Department. To insure the proper reception of its proposals by Parliament and yet guard against decisions on the basis of parties, the Speaker of the House of Commons *ex officio* was suggested for the chairmanship. The Committee felt that his great experience and authoritative non-party status would render him an ideal choice. The Report recommended the separate handling of the earlier stages of redistribution by separate boundary commissions for each part of the United Kingdom and then the groups sitting as one commission for the ultimate adoption of redistribution proposals for report to Parliament.

The government announced its intention of legislating on redistribution and its readiness to adopt the recommendations of the Departmental Committee but deferred action until the Speaker's Conference had reported on the principles by which the boundary commissioners are to be guided.

#### *Speaker's Conference*

Parliament, goaded by public opinion and the Committee on Electoral Machinery, demanded fundamental electoral reform. The Prime Minister was importuned to appoint a Parliamentary committee of inquiry into redistribution and such other electoral matters as age qualifications, reduction of election costs, further restrictions on cam-

paign activities of outside agencies, variations in candidates' deposits, conveying voters to the polls, and, especially, methods of voting which would secure fairer representation of political opinion in the House. The government itself recognized during the debate on the registration bill that more positive steps were needed. Promise of time for debate on electoral reform was definitely made and this eventuated in two days of discussion in the House in early February 1944. Immediately thereafter the Speaker's Conference on Electoral Reform and Redistribution of Seats was set to work.

In addition to its presiding officer, the Speaker, the Conference consisted of 32 members of whom 29 were commoners and 3 were peers. The combined party representation was as follows: Conservatives, 17; Labor, 9; Liberal, 2; and one each from the National Liberal, Independent, Independent Labor and Independent Labor Party. In addition, the membership was supposed to reflect various shades of opinion, different types of constituency, and all parts of the country. Giving a clear majority of votes to the Tory Party, the Conference was more or less proportionally representative of the strength of the groups returned to Westminster ten years ago.

The terms of reference of the Conference were (a) redistribution of seats, (b) reform of franchise (both Parliamentary and local government), (c) conduct and costs of Parliamentary elections, and expenses falling on candidates and Members of Parliament, and (d) methods of election.

The Conference met for the first time on February 16, and had held sixteen meetings when it made its first report on May 24, 1944.<sup>1</sup> The Prime Minister had asked for early reports on redistribution and assimilation of the Parliamentary and local government franchises. The Conference felt, however, that it was not possible to reach firm conclusions on redistribution until it had decided whether or not to recommend any change in methods of election, and further it felt both questions would also be affected by decisions on the business premises qualification and on university representation. Consequently its first report covered three of the terms of reference and left only costs of Parliamentary elections and expenses of candidates for its final report.<sup>2</sup>

#### *Redistribution Completed*

The Conference went on record in favor of a general redistribution of seats as soon as practicable. The Conference recommended

<sup>1</sup> Cmd. 6534, May 1944.

<sup>2</sup> Cmd. 6543, July 1944.

immediate subdivision of abnormally large constituencies in preparation for an early General Election and a full redistribution as soon as the boundary commissioners had completed the first step. The temporary rules laid down by the Speaker's group governing subdivisions stated that an electorate which under the 1939 register was not less than approximately 190 per cent of the quota for Great Britain (53,110) should be made into two constituencies. Similarly those having 290 or 390 per cent of the quota are to be subdivided into three or four constituencies, respectively. For this temporary increase in constituencies twenty-five additional seats in the House of Commons are to be provisionally provided.

The permanent rules suggested by the Conference to govern the boundary commissioners in making their later complete redistribution specified that the total number of Members of the House of Commons for Great Britain should remain substantially at the present figure of 591, with no reduction in the number for Scotland, Wales or Northern Ireland. This would mean that for every new constituency created by the subdivision of abnormally large ones under the temporary scheme, some other abnormally small constituency would have to be abolished when the permanent adjustment is made. The quota is to be determined by dividing the total electorate by the total number of seats existing at the time the boundary commissioners report. This would insure an up-to-date quota at all times. Existing constituencies are not to be modified unless the electorate falls short of or exceeds the quota by more than 25 per cent.

Double member constituencies are in general to be abolished. The City of London, however, is to continue to return two members. Maintenance of the tradition that Parliament is a representative assembly of the several local communities is emphasized by the rule that boundaries of Parliamentary constituencies shall coincide, where convenient, with the boundaries of local government administrative areas. Commissioners may depart from strict application of the rules if special geographical considerations appear to render such a course desirable.

The machinery to carry out these principles of redistribution is substantially that recommended by the Committee on Electoral Machinery. Separate boundary commissions for England, Scotland, Wales and Monmouthshire, and Northern Ireland should undertake, at intervals of not less than three nor more than seven years, a general review of the representation in Commons of their part of the United Kingdom. In addition, special reports may be submitted at any time

recommending changes in particular constituencies. All reports would be submitted to the Secretary of State concerned who would in turn lay them before Parliament with a draft Order in Council subject to affirmative resolution. However, the general reports on the first comprehensive scheme for the whole United Kingdom are to be given effect by a bill.

Acting with dispatch on the May report of the Speaker's Conference, the government introduced, on August 3, 1944, a redistribution bill closely adhering to the principles set forth in that report and the machinery recommended by the Committee on Electoral Reform.<sup>13</sup> The House of Commons (Redistribution of Seats) Act, passed on October 24, 1944, made provision for the immediate division of at least twenty abnormally large constituencies and created four permanent boundary commissions charged with the periodic redistribution of seats at Parliamentary elections.<sup>14</sup> Thus Parliament has corrected the most glaring inequalities in constituencies and set up machinery to assure the constant readjustment required to maintain equal electoral districts—one of the main principles for which the Chartists fought a hundred years ago!

### *Reform of the Franchise*

The chief reform, and probably the most fundamental one the Speaker's Conference initiated, was the assimilation of the local government franchise to the decidedly more democratic Parliamentary one.<sup>15</sup> Hitherto the occupants of taxable premises (and their spouses) have composed the municipal electorate. Whereas representation has depended upon ownership or use of property, the Conference would base it upon mere attainment of the age of full citizenship. Both Parliamentary and local government elections could then be held on the new registers provided for in the 1943 Act.

The Conference had apparently dried up its progressive font after suggesting redistribution and assimilation of the local to the Parliamentary franchise. One press reaction to the report was that none of its positive proposals rank in importance with its negative decisions.

<sup>13</sup> The government accepted an amendment to the bill permitting the boundary commission for England to consider for subdivision other abnormally large constituencies in addition to the twenty designated for immediate division.

<sup>14</sup> H.C. Bill, c. 44, 1944.

<sup>15</sup> A bill calling for universal adult suffrage and adding seven million voters in local elections was being debated on second reading as this article goes to press. (This Bill was passed later in 1945. The local government franchise was thus assimilated to the parliamentary franchise, save that peers retained their right to vote in local government elections. Ed.)

The conferees rejected, 25 to 6, a resolution that no person at any election should vote more than once. A flint stone in the Parliamentary debate on the registration bill in 1943, the plural vote also made the sparks fly in the Parliamentary pre-conference discussions on electoral reform. About one and one-third per cent of the voters enjoy a double franchise given them because they occupy business premises. Defenders ambiguously maintained that the business vote was not an extra one but simply a statutory vote to which certain individuals have been entitled for years, while opponents replied that the plural vote can be justified only by giving every workman the same franchise in the place of his employment. A slight concession to democracy was made in the recommendation that henceforth occupation of an office or shop gives a plural vote to one member of a married couple and not to both, as at present. The second type of plural franchise benefiting Conservatives, the university vote, remained untouched.<sup>16</sup> The argument that youth who defend the country with their lives should vote apparently carried little weight with the conferees, for they rejected a resolution to lower the voting age to eighteen.

### *Proportional Representation*

Real reform in the machinery of representative government, according to one extremely vocal segment of British opinion, depends upon a change in the method of voting. Advocates of proportional representation have been busily publishing their preachments in every printed form. Two recent studies of contemporary electoral history proclaim the "monstrous inequities of the elections since 1918" in which the Liberal Party was wrecked, the Labor opposition dangerously reduced, the Conservative majority unduly inflated, and the country brought to near disaster.<sup>17</sup> The moral is unmistakable.

The opponents of P.R. contend that the main purpose of a General Election is not to produce an exactly representative House of Commons, but to produce a government based on solid majorities. In their view, to endanger this advantage—an advantage not always enjoyed in the classical period of Parliament in the mid-nineteenth century—by attempting to secure the precise representation of minorities among the electorate would be an unwarrantable risk. The two-party system and local representation would be imperiled by devices encouraging minor parties and multimember constituencies.

<sup>16</sup> The university vote was unaffected by the registration act, except that a service man entitled to it might exercise it by proxy. The university constituencies were specifically exempted from the application of the Redistribution Act.

<sup>17</sup> Ross, J. F. S., *Parliamentary Representation* (London and New Haven, 1944). MacKay, R. W. G., *Coupon or Free* (London, 1944).

Officially the Conservative and Labor parties are against this electoral principle. In the debate in February 1944 on electoral reform at least seven members of the Speaker's Conference revealed themselves as emphatically opposed while only four were confessed supporters likely to press forcibly for it. When the Conference rejected a comprehensive resolution adopting the principle of proportional representation, it was a keen disappointment to many but no surprise.<sup>18</sup> A plan for the partial adoption of P.R. as an experiment in the next election was also tabled. Nor did the Conference look with favor on the alternative vote as a compromise and defeated a resolution which would have made it applicable in all single member constituencies.<sup>19</sup>

### *Candidates' Expenses*

Expenses of candidates and the conduct and costs of Parliamentary elections were considered by the Conference during the early summer with "conservative" results.<sup>20</sup>

Able and popular candidates have been long overlooked by the central party office bent on securing a nominee whose private purse or trade-union backing will finance the campaign and keep the seat warm by generosity once it has been won. Hence there has been agitation for further limitation on election expenses with some support given the idea that the state undertake payments of a fixed sum to be the maximum expended by all candidates, and that by law the practice of "nursing" a constituency by generous benefactions be circumscribed. The Conference proposed a reduction in the maximum scale of candidates' expenses to 450 pounds for all constituencies, to be supplemented with an allowance at the rate of 1*d.* for each elector in the borough constituencies and 1½*d.* for each elector in the county constituencies.<sup>21</sup> It rejected the proposal that the state should afford direct financial assistance to candidates. Believing that legislation could not effectively deal with the problems of contributions to charities and to party funds, the conferees merely enacted resolutions deprecating nest feathering. The hope was expressed that this condemnation would be a definite help to candidates exposed to unreasonable demands and deter party organizations inclined to put financial contributions before merit and ability. *The Economist* inter-

<sup>18</sup> A proposed amendment to the redistribution of seats bill precipitated a vigorous discussion of P.R. ending in a House vote defeating it, 202 to 18.

<sup>19</sup> Arthur C. Turner, while advocating P.R., strongly rejects the alternative vote as a compromise. *The Post-War House of Commons* (Glasgow, 1942), pp. 24-25.

<sup>20</sup> Cmd. 6543, July 1944.

<sup>21</sup> At present the maximum expenditure permitted by law is 6*d.* per elector in county constituencies and 5*d.* in borough constituencies.



preted it as a deserved censure of the Conservative Party but the coat fitted all around.<sup>22</sup> The question was raised in *The New Statesman and the Nation* whether or not this resolution will "put an end to the virtual sale of the safest Labor seats to the highly subsidized nominees of trade unions and other bodies."<sup>23</sup> Candidates' deposits should be returned, the study group felt, if a candidate polls one tenth of the total votes cast, instead of the present requirement of one eighth, when more than three are running.

It was thought the physically incapacitated should be placed on the list of absent voters. Motor vehicle use for conveyance of able-bodied voters to the polls, which the Laborites tried to make illegal in 1931, was not condemned and remains one of the "main evils from which British elections now suffer."

As representative government emerges successfully from its period of greatest challenge, Great Britain has been endeavoring, significantly enough, to perfect its basis, the electoral process. However, wartime conditions have not prompted Parliamentarians and their agents to so much adventuresome governmental daring and self-sacrifice as are needed for complete democracy. The rest of the reforms proposed by the Speaker's Conference should promptly be made law and their orthodoxy should bring forth little opposition. A post-war House of Commons elected under these limited reforms may be more imbued with lessons of the age and might well take further steps to improve elections and representation.

<sup>22</sup> August 5, 1944, p. 179.

<sup>23</sup> August 5, 1944, p. 89.

# IX

NICHOLAS MANSERGH

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## *The Use of Advisory Bodies in the Reform of the Machinery of Government\**

### I. A GENERAL SURVEY OF THE PROBLEMS UNDER CONSIDERATION<sup>1</sup>

ONE of the most striking developments in British constitutional practice since 1919 has been the growing use of advisory bodies to assist the Central Government in the performance of its duties. For the most part these advisory bodies, which vary considerably in constitution and in function, are appointed by and work in conjunction with an individual department of State. It is the purpose of this study to analyse the use that has been made of advisory bodies in one specialized field—a field that is essentially not departmental but constitutional in character, and that has consequently remained comparatively unaffected by postwar developments.

In this book the term "advisory body" is used in its widest sense, and is intended to describe any body appointed with the purpose of advising the Central Government. In the particular field under consideration it refers to Royal Commissions, Departmental Committees, and Conferences of the two Houses of Parliament alike. The phrase "Reform of the Machinery of Government" is perhaps somewhat misleading as a title, because of its inevitable association with the Haldane Report. But there appeared no satisfactory alternative, since the phrase "constitutional reform" is open to more substantial objections where there is no written constitution. The scope of this inquiry is, however, reasonably well defined. It is concerned to present a critical analysis

\*R. V. Vernon and N. Mansergh (eds.), *Advisory Bodies* (Allen & Unwin, 1940), pp. 32-85. Reprinted by kind permission of the publishers.

<sup>1</sup>I would like to take this opportunity of expressing my gratitude to the Leverhulme Trustees, for a grant which enabled me to carry out this piece of research. I am also much indebted to Mr. R. C. K. Ensor for most helpful comments and criticisms on my contribution to this study.—N. Mansergh.

of the value of the advisory bodies which have been appointed in recent years to consider the reform of any of the organs of the Central Government or any changes in the constitutional relationship between them.

The subjects which the Government from time to time has seen fit to refer to such advisory bodies indicate clearly that their potential significance is always, and their actual significance is frequently, very considerable. In the last thirty years advisory bodies have investigated the desirability of a reform of the electoral system, of a redistribution of the functions of government; one has been appointed to devise the most practical means of giving effect to a grant of federal devolution, another to design a constitution for a reformed Second Chamber; a third has examined the extent and significance of the recent growth of ministers' powers. Since matters of such fundamental constitutional importance are referred to advisory bodies a critical analysis of their work should not be without interest.

There are many questions to be asked relating to the composition and work of these advisory bodies. Who are the persons (for example) normally appointed to serve on such committees? Is the personnel predominantly "expert" or "representative" in character? What type of evidence is submitted? To what extent are "interests" heard? Are the conclusions based solely on the evidence submitted? What is the value of such Reports? What is their effect on parliamentary and public opinion? Are the advisory bodies appointed to investigate a problem, or to draft conclusions suitable for statutory enactment? With what success do they accomplish the task allotted to them? An answer to these and other questions could scarcely fail to throw some revealing sidelights on the working of a somewhat obscure piece of constitutional machinery.

To-day commissions and committees on various subjects are appointed in rapid succession, but their reports have frequently no apparent consequence. As a result the public entertains the suspicion that such bodies are sometimes appointed for the purpose of obtaining not advice, but an excuse for delay or for the shelving of an inconvenient proposal.<sup>2</sup> Few to-day would endorse the tribute paid by Lord Beaconsfield when he said:

"I do not think there is anyone who more values the labours of Parliamentary Committees than myself. They obtain for the country an extraordinary mass of valuable information, which probably would

<sup>2</sup> Sir Arthur Salter, *Framework of an Ordered Society*, 1933, pp. 49-51.

not otherwise be at hand or available, and formed as they necessarily are . . . of chosen men their reports are pregnant with prudent and sagacious suggestions for the improvement of the administration of affairs.”<sup>3</sup>

The aim of this study is to indicate the precise character of the contribution of advisory bodies in a selected and not unimportant field, and thereby to furnish some part of the evidence on which to base a comprehensive verdict of their use in modern English government.

In the analysis which follows, of the work and value of the five selected advisory bodies appointed in the last thirty years, there is included some account of the circumstances which led to the appointment of each committee and a brief summary of the central problems discussed in the respective reports. The latter is inserted with a view to giving where occasion arises some explanation of the issues upon which the opinion of members was divided, and, more important, with the object of providing an account both of the principal questions to be decided and of the process of reasoning which led to the adoption of the accepted conclusions. The summary, which is in fact an outline of recent proposals for constitutional reform in the United Kingdom, is not critical in character since the form, and not the substance, of such Reports is the primary concern of this study.

## II. THE ROYAL COMMISSION ON ELECTORAL SYSTEMS

The Royal Commission on Electoral Systems was appointed in December 1908. It was appointed to examine “the various schemes which have been adopted or proposed in order to secure a fully representative character for popularly elected legislative bodies, and to consider whether and how far they, or any of them, are capable of application in this country with regard to the existing electorate.” The Report<sup>4</sup> of the Commission was published early in 1910.

### *Its Antecedents*

Since 1859, the year in which Thomas Hare, a notable champion of electoral reform, published his treatise on “the Election of Representatives,” opinion in the British Isles had become increasingly aware of the importance of electoral machinery in the political system. It was not so much that Thomas Hare succeeded in convincing an ever-increasing proportion of the electorate of the need for mathematical

<sup>3</sup> *Hansard*, vol. 235, pp. 214-18.

<sup>4</sup> Cd. 5163.

precision in the counting of votes for Parliamentary elections, as that the statement of the case for Proportional Representation which he expounded with so much enthusiasm necessarily focused attention on defects in the existing system of election.

The case for Proportional Representation secured the attention of a wider audience than would otherwise have been possible through the advocacy of John Stuart Mill. Senator Count Goblet d'Alviella, in his evidence before the Royal Commission in 1909, stated that the demand for Proportional Representation in Belgium, and its ultimate adoption in that country, was directly inspired by the writings of Mill.<sup>5</sup> In his book on Representative Government, Mill had proclaimed himself an unqualified supporter of this electoral reform. His words, as was rightly their due, so influenced the opinion of his time that they deserve to be recalled. He wrote:

"Democracy as commonly conceived and hitherto practised is the government of the whole people by a majority of the people exclusively represented. The former is synonymous with the equality of all citizens; the latter, strangely confounded with it, is a government of privilege in favour of the numerical majority, who alone possess practically any voice in the State. This is the inevitable consequence of the manner in which the votes are now taken to the complete disfranchisement of minorities."

His verdict on Hare's proposals was decided.<sup>6</sup>

"The natural tendency of representative government, as of modern civilization, is towards collective mediocrity: and this tendency is increased by all reductions and extensions of the franchise, their effect being to place the principal power in the hands of classes more and more below the highest level of instruction in the community. But though superior intellects and characters will necessarily be outnumbered, it makes a great deal of difference whether or not they are heard. I am unable to conceive of any mode (of election) by which the presence of such minds can be so positively insured as by that proposed by Mr. Hare."<sup>7</sup>

In the period that elapsed between the publication of *Representative Government* in 1861 and the appointment of the Royal Commission on Electoral Systems in 1908 the cause of Proportional Representation made more notable progress in countries other than Great

<sup>5</sup> *Minutes of Evidence*, p. 52.

<sup>6</sup> It should be remembered that Hare advocated election by one national constituency.

<sup>7</sup> J. S. Mill, *Representative Government*, 1863, ch. vii.

Britain. There were many reasons for this, of which only two need be recalled here. In the first place the two-party system had become a tradition of English Parliamentary life; and even though at the close of the century its harmonious existence was disturbed by the ever more active intrusions of the Nationalist Party, it was clear that a reform of the electoral system itself could do nothing to remove this source of friction. In the second place electoral reform would necessarily be accompanied by redistribution of seats on a population basis as a preliminary to the creation of the larger constituencies required for Proportional Representation. Such a redistribution would involve a reduction in the number of Irish members. Neither party was willing to sponsor such a measure. It need scarcely be added that these particular reasons were powerfully reinforced by the apathy of the electorate and the normal aversion to change.

In the early years of this century Proportional Representation received more careful consideration. Recent elections had emphasized the inaccurate representation of voting strength that was liable to occur under the simple majority system, divisions within the older parties as well as the rise of the Labour Party threatened the survival of a two-party system, which indeed had never been so crystallized as its admirers would have us to believe. As *The Times* remarked,\* "the main objection to the system (Proportional Representation) has been that, inasmuch as parties are very evenly divided in this country, no stable government would be possible with the limited majority which is all that Proportional Representation would be likely to secure. The violence of the swing of the pendulum moderates, and the growth of third and fourth parties have greatly diminished, the weight of this objection." In addition, evidence from countries that had adopted an alternative electoral system was available and was of a character that deserved to be collected and to receive the most serious examination from a responsible authority.

#### *The Appointment of the Royal Commission*

In November 1908 a deputation was received by Mr. Asquith in the House. The deputation, which was representative of all parties and included many distinguished men like Sir William Anson, Lord Hugh Cecil, Mr. Arthur Henderson, then Chairman of the Parliamentary Labour Party, Mr. John Simon, Mr. C. P. Scott, was introduced by Lord Courtney who urged the appointment of a committee to inquire into the whole question of electoral reform. The deputation,

\* November 8, 1908.

though composed for the most part of persons favourable to Proportional Representation, desired not an immediate measure for the reform of the electoral system but an examination by an authoritative and impartial body of all the issues involved. The Prime Minister acceded to the request of the deputation.

It is instructive to recall that both Lord Courtney and the Prime Minister were very uncertain as to the most suitable type of committee to advise on this question. Lord Courtney considered a Royal Commission the most authoritative, but "it occupies some time, and however perfect the results may be, there is a considerable period before the result is known." He suggested alternatively a Departmental Committee or a Select Committee of the House of Commons. The Prime Minister was equally doubtful as to what form such an instrument of inquiry should assume. He remarked: "Royal Commissions—with all respect be it said—are not a very satisfactory instrument for this sort of purpose. Many people have got the notion that a Royal Commission is not properly constituted unless it contains among its members a representation of all the different views that can be entertained at the outset as to the subject-matter about which it is appointed to inquire. The result is that these bodies are usually too numerous in their composition and some take an inordinate time. It remains therefore to be considered whether we can devise some simpler and more expeditious, as well as equally authoritative, organ of investigation. . . ."<sup>9</sup>

#### *The Personnel of the Commission*

In the event the Prime Minister advised the appointment of a Royal Commission designed so as to eliminate these particular objections. The Royal Commission was small in number, its full membership being eight. More significant still, it was composed entirely of men credited with open minds on the subject under discussion. There was no member of the Proportional Representation Society, even though Lord Courtney or Sir William Anson might be described as well equipped to serve on such a body. Likewise there was no member noted as a defender of the simple majority system. A contemporary publication of the Proportional Representation Society stated, "So far as we know no member of the Commission either publicly or privately has ever made any declaration of his views on the question of the reform of representation."<sup>10</sup> This principle of "neutrality" in composi-

<sup>9</sup> *Vide verbatim* account in *Representation*, vol. i.

<sup>10</sup> *Ibid.*, vol. ii, p. 10.

tion had important, and not wholly desirable, consequences in the drafting of the Report.

The personnel of the Commission, whilst occasioning some surprise, met with general approval. The Chairman, Lord Frederick Cavendish, had been Unionist member for a Lancashire constituency from 1895 till his defeat in 1906; of the other members Lord Lochce was a Privy Councillor and at one time Parliamentary Secretary to the Admiralty in Mr. Asquith's Government; the Hon. E. S. Montagu was the Liberal M.P. for the Chesterton Division of Cambridgeshire and private secretary to the Prime Minister; Sir Francis Hopwood was Permanent Under Secretary at the Colonial Office; Sir Courtenay Ilbert was Clerk of the House of Commons; Sir Charles Eliot, former Governor of East Africa, was then Principal of Sheffield University; the Hon. W. P. Reeves, formerly High Commissioner for New Zealand, was then head of the London School of Economics; Mr. J. W. Hills was the Unionist member for Durham. Thus the Unionist and Liberal Parties had each two representatives but neither the Nationalist nor the Labour Party had any. Moreover the Commission had a strong representation of men with overseas experience.

### *The Terms of Reference*

The Commission's terms of Reference "admit of a wider and a narrower interpretation. On the one hand it might be argued that the representative character of a legislative body would be influenced by any proposals affecting its composition. On the other hand, the various methods of actual election, considered as a means of giving effect to the wishes of the electorate, form in themselves a definite, if restricted, field of investigation. The Commission decided to confine themselves to the latter interpretation. The Report, consequently, deals only with systems of election and the inquiry is devoted to an examination of the three elements of any such system, namely the method of recording a vote, the method of determining the successful candidate, and the number of members returned by each constituency.

In Parliament and in the Press the purpose of the Commission was interpreted quite simply as an examination of the practical value of that system of Proportional Representation known as the Single Transferable Vote. The *Manchester Guardian*, then a leading supporter of the proposal, said: "The recently revived prominence of the proposal for Proportional Representation is recognized in the appointment of a Royal Commission. The proposal is, as a matter of fact,

<sup>11</sup> Quoted on p. 125.



exceptional, in that it has been inquired into and thought out much more than it has been popularized. It has some difficulty in finding opponents among people, whatever their party, who have examined the arguments in its favour. But it needs a great deal of publicity and influential commendation to interest the listless part of the Electorate."<sup>2</sup>

### *The Report*

The Commission was appointed in December 1908. Its Report was published in the spring of 1910. The Prime Minister was therefore not wholly justified in thinking that Royal Commissions tend to take "an inordinate time" for their inquiry.

The Commission was granted full powers to call witnesses and to have access to documents. In all twenty-nine witnesses were called and examined. Lord Courtney, Lord Balfour of Burleigh, Mr. J. H. Humphreys and Mr. J. Fischer Williams, all officers of the Proportional Representation Society, gave evidence in favour of reform on the line of the Single Transferable Vote. Other witnesses included Mr. J. M. Robertson, Sir Charles Dilke, Sir William Anson, Lord Hugh Cecil, Count Goblet d'Alviella of the Belgian Senate, M. Pierre Flandin of the French Senate, Mr. J. McCall, Agent-General for Tasmania, where Proportional Representation was in operation. The examination of witnesses which began on April 1st was concluded on July 22, 1909. Altogether nineteen sessions were devoted to the examination of these witnesses. The attendance of members of the Commission on the whole was good and never fell as low as the quorum of three.

The Report is a document of considerable length occupying thirty-eight pages. It is supplemented by five appendices which give details of various electoral systems as used in other countries. The minutes of evidence fill over two hundred pages."<sup>3</sup>

### *The Verdict of the Commission*

The conclusions reached by the members of the Commission, though indecisive in character, were on the whole unfavourable to Proportional Representation. The Commission recommended: "the adoption of the Alternative Vote in cases where more than two candidates stand for one seat. We do not recommend its application to two-member constituencies, but we submit that the question of the reten-

<sup>2</sup> December 22, 1908.

<sup>3</sup> Published separately, Cd. 5352.

tion of such constituencies, which are anomalous, should be reconsidered as soon as opportunity offers. Of schemes for producing proportional representation, we think that the transferable vote would have the best chance of ultimate acceptance, but we are unable to recommend its adoption in existing circumstances for elections to the House of Commons."

From this verdict Lord Lochce alone dissented and signed a minority report in favour of the Single Transferable Vote.

### *Slight Value of the Oral Evidence*

A comment may be added with regard to the effect of the constitution of the Commission upon its work. The Prime Minister, it will be remembered, referred to the advantages of a "neutral" committee of inquiry. In fact, the admitted "neutrality" of all the members of the Commission had disadvantages which more than counterbalanced its advantages. During the cross-examination of witnesses, to take a notable instance of the disadvantages involved, there was at times a regrettable lack of expert knowledge on the part of members of the Commission. This was, as one might expect, more noticeable when the details of some Proportional Representation systems were under discussion. Many of the members of the Commission had had practical experience of the working of the simple majority system, but their knowledge of Proportional Representation was, with one possible exception," purely theoretical. Moreover, it was clear at the date of appointment, that the British political members of the Commission were "selected because they had at no time expressed any interest in electoral systems at all.

It would be mistaken to attribute the unsatisfactory quality of the oral evidence wholly to the lack of "expert" members serving on the Commission, but there is no doubt that the absence of such members did materially diminish its potential value. Some of the questions asked of witnesses were of a most elementary character; a great many invited some vague generalization in reply. Only in rare instances was an attempt made to elucidate certain particular facts and opinions from a witness competent to furnish them. For the rest the two-hundred-page Report of random questions and answers does little indeed to justify either the time or the money spent in collecting such evidence."

<sup>11</sup> Mr. Reeves.

<sup>12</sup> That is half the total membership. By political is meant members who had taken part in active politics but excluding Civil servants, etc.

<sup>13</sup> Cf. comments by S. and B. Webb in *Methods of Social Study*, 1932, ch. vii.

*The Indecisive Character of the Report*

Apart from the occasional inadequacy of the cross-examination the Report suffers from a failure to pronounce a verdict on certain disputed but very important issues. Here is an extract which illustrates this lack of decision:

"A survey of these arguments shows that . . . an evaluation of them by such a body as a Commission is out of the question. The case for change consists partly of a theory of representation which is entirely rejected in many quarters and partly of assertions about the effect of the present system, which *we are not in a position either to affirm or deny*. . . . But certain points of a general nature emerge. The first of these is that it is *impossible to form a reliable estimate* of what the results of the Single Transferable Vote would be. It is asserted by some that small parties would spring up like mushrooms; by others that the two-party system would survive any change of mechanism whatever. The advocates of the Transferable Vote claim that under it all parties would be represented in proportion to their strength; its opponents that as a matter of fact, minorities would have little more chance than at present. That 'independent members' would be returned to any extent . . . is affirmed and denied. . . . The only point which is agreed upon is that the general level of Government majorities would be greatly reduced. *Outside this almost any result might plausibly be foretold.*"<sup>17</sup>

Surely, however, it is the business of such a Commission of inquiry, having heard the evidence, to advance some conclusion on these controversial and very important points instead of contenting itself with the statement that "any result might plausibly be foretold."

Inconclusive statements of lesser importance are to be found throughout the Report. As for example:

"It is said that there are three hundred systems of proportional representation now in existence, a fact which, if true, would not be surprising as the invention of such systems is a task which has occupied mathematicians and constitution makers in several countries for many years past."<sup>18</sup>

A member of the Commission with some knowledge of Proportional Representation would certainly have pointed to the palpable absurdity of such a remark and have invited an enumeration of the three hundred systems!

<sup>17</sup> Report, p. 31. The italics are mine.

<sup>18</sup> Report, p. 13.

The general conclusion to be drawn from these particular criticisms is that a "neutral" membership in a committee of inquiry is not an unqualified advantage.

*Parliament and the Report*

The recommendations of the Commission were not of sufficient interest to occasion a debate in the House subsequent to their publication. A debate on a notice in favour of electoral reform raised by a private member did, however, take place before the sittings of the Commission had concluded.<sup>29</sup> Only two points of interest emerged: Mr. John Burns declared that the Government would allow a free vote on a measure for Proportional Representation, while Sir William Anson declared that no measure for Proportional Representation could be enacted in the immediate future. He argued convincingly that such a reform could be carried only as a government measure; a government with a large majority would not introduce such a measure because the "inevitable result would be that the majority would be diminished, if not extinguished, at the next election." A government with a small majority could not do it either because Proportional Representation involved redistribution; redistribution involved a considerable reduction in Irish representation, and such a government "could not be independent of a solid Nationalist Vote averse to any reduction."<sup>30</sup> It is doubtful, therefore, even had the Commission returned a verdict favourable to immediate reform, whether the Government would have acted on its recommendations.

The Commission, it will be remembered, did recommend the adoption of the Alternative Vote in cases where more than two candidates stand for one seat and suggested that the reform should be accompanied by the abolition of the remaining two-member constituencies. The former recommendation has been adopted only in the case of the University constituencies, while a few of the two-member constituencies still survive.

The Representation of the People Act<sup>31</sup>—which decreed that "at a contested election for a University constituency, where there are two or more members to be elected, the election shall be according to the principles of Proportional Representation, each elector having one transferable vote"—did not enact the recommendations of the Royal Commission in a wider field. At the same time it gave some.

<sup>29</sup> *H. of C. Debates*, vol. xv, cols. 1387-1430.

<sup>30</sup> *H. of C. Debates*, vol. xv, col. 1411.

<sup>31</sup> 7 and 8 Geo V., ch. 64, 1918.

and as it has proved quite unfounded, encouragement to the supporters of Proportional Representation in enacting that "His Majesty may appoint commissioners to prepare . . . a scheme under which as nearly as possible one hundred members shall be elected to the House of Commons at a general election on the principle of proportional representation."<sup>22</sup> The new constituencies, which were to be formed by the amalgamation of single-member constituencies at the discretion of the commissioners and without further legislation, were to return "not less than three nor more than seven members." In fact no government has seriously contemplated the exercise of this permissive authority, though it would furnish probably decisive evidence as to the practicability and the comparative accuracy of Proportional Representation.

### *The Value of the Report*

Despite certain defects in the document itself, and despite the fact that its recommendations did not receive a legislative sanction, the Report on Electoral Systems exercised, and in some degree still exercises, a very considerable influence. It disposed once for all of the principle of second ballot, and it crystallized the opinion that the Single Transferable Vote was the only form of Proportional Representation suitable for adoption in the United Kingdom. The Commission was appointed before approval or disapproval of electoral reform had become a criterion of political allegiance. Unlike the Conference<sup>23</sup> appointed some years later, the work of the Commission was not vitiated by divisions on party lines. As a result its report has the merit of presenting the case for and against electoral reform with impartiality. The mass of evidence accumulated has added considerably to our knowledge of various electoral systems, and the continued relevance of that information in post-war years is indicated by the reprint of the Report in 1928. So in the last analysis it may be concluded that the work done by the Commission has proved of theoretical rather than of practical value and that its contribution has been instructive rather than constructive in character.

### III. THE MACHINERY OF GOVERNMENT COMMITTEE

The Machinery of Government Committee was appointed as a sub-committee of the Reconstruction Committee in July 1917. Its appointment was confirmed on the establishment of the Ministry of Recon-

<sup>22</sup> *Ibid.*, S. 20.

<sup>23</sup> *Redistribution of Seats Conference, 1917-18*, Cd. 919.

struction, which followed almost immediately. The status of this advisory body was in all important respects similar to that of a normal departmental committee of inquiry. The Committee's terms of reference were "to inquire into the responsibilities of the various departments of the central executive government, and to advise in what manner the exercise and distribution by the Government of its functions should be improved." The Report<sup>22</sup> was published in 1918.

### *Its Antecedents*

As the functions of government expand so the difficulty of securing co-ordination of activity increases.<sup>23</sup> During the War of 1914-18, the expansion of governmental business was accelerated so rapidly as to focus attention on the problems involved. A temporary solution was found in the formation of the War Cabinet of five. The ministers who were appointed to it were deliberately chosen because for the most part they were without portfolio:<sup>24</sup> they were freed therefore from general administrative work and were able to devote the greater part of their time to the prosecution of a single task. It was for this reason that the Secretaries of State for Foreign Affairs, War, India and the First Lord of the Admiralty were not made permanent members of the War Cabinet, though they were always present at a discussion in which their department was concerned. As a consequence the War Cabinet was able to meet very frequently. In June 1918 Lord Curzon said: "This Government has been in existence eighteen months. During that time there have been 525 meetings of the War Cabinet. In addition there have been thirty conferences with our allies at which the War Cabinet, or the greater part of the War Cabinet, have been present. Thus there have been 555 meetings in 474 working days excluding Sundays. This is exclusive of meetings of the Committees of the Cabinet . . ."<sup>25</sup>

While the War Cabinet as such made no difference to the relation between the Cabinet and the parties, it did provide a means for securing more, and above all, quicker decisions on matters relating to the prosecution of the War. This was done (a) by reducing the membership of the Cabinet, and (b) by divorcing its members from departmental responsibilities. The Report of the War Cabinet for 1917 says:

"The most important constitutional development in the United Kingdom during the last year has been the introduction of the War

<sup>22</sup> Cd. 9230.

<sup>23</sup> Cf. W. Ivor Jennings, *Cabinet Government*, 1936, ch. 6.

<sup>24</sup> *H. of L. Debates*, vol. 30, col 267.

<sup>25</sup> Cd. 9005.

Cabinet system. This change was the direct outcome of the War itself. As the magnitude of the War increased, it became evident that the Cabinet system of peace days was inadequate to cope with the novel conditions. The enlarged scope of Government activity and the consequent creation of several new departments made a Cabinet meeting under the Chairmanship of the Prime Minister far too unwieldy for the practical conduct of the War. It was extremely difficult for so large a body to give that resolute central direction which became more imperative the more the population and resources of the nation had to be organized for a single purpose—the defeat of German militarism.”

The War Cabinet solved the immediate problem of adjusting an executive which depended in peace time on party support in the House of Commons to the unity demanded by war. But as it was clear that its constitution would be an anomaly after the War so its existence brought under consideration all-important questions affecting both the proper distribution of the functions of government and the relation between the various departments and the Cabinet. The Haldane Committee was appointed to resolve the difficulties.

#### *The Personnel of the Committee*

The members of the Committee were seven in number, and for the most part persons of outstanding distinction. The Chairman was Lord Haldane, who had been Secretary of State for War 1905-12 and Lord Chancellor 1912-15; the other members were the Right Hon. E. S. Montagu, a Liberal M.P. who had been Minister of Munitions and member of the War Committee in 1916, and was then Secretary of State for India; Sir Robert Morant, Permanent Secretary to the Board of Education in the decisive period 1903-11; the Right Hon. Sir George Murray, a former Permanent Secretary to the Treasury; Sir Alan Sykes, a Unionist M.P.; the Right Hon. J. H. Thomas, M.P. for Derby and General Secretary of the National Union of Railwaymen (1918-24); and Mrs. Sidney Webb, of whom it need only be said that she had already acquired invaluable experience of Government inquiries, particularly in the Poor Law Commission of 1905-9. The personnel of the Committee was not only representative but also “expert.” There were four members with Parliamentary experience, there were two very distinguished Civil servants; there were two members of Cabinet rank, with Mrs. Webb to represent the more academic approach to the problems under review. This gives to the

Report, particularly to its more detailed suggestions for the reorganization of departmental administration, an authority rare even among official reports. The hand of Sir Robert Morant, for example, can be detected in recommendations concerning the future of the Board of Education," whilst Lord Haldane has expressly stated that the section dealing with the proposed Ministry of Justice "was written with my own hand."<sup>20</sup>

*Lord Haldane and the Report*

Most of the work of the Committee was carried out by Lord Haldane, Sir R. Morant, Mrs. Webb and Sir George Murray.<sup>21</sup> Mr. Montagu was absent in India during the greater part of the period covered by the Committee's sittings, while Sir Alan Sykes was not appointed a member till late in 1917. But it deserves to be recorded that this Committee was created at the instigation of Lord Haldane, that he presided over its sittings, that he planned the Report, and indeed did the major part of the drafting himself.

Since it is rare for an advisory body of this kind to owe so much to the inspiration and labours of one man, no matter how distinguished, it is well to record the motives which prompted Lord Haldane. The most important was his experience of the pre-war Liberal Cabinets. He recalled in his autobiography that "

"The Cabinet was organized on an old system which I hope will never be restored. The Prime Minister knew too little of the details which had to be got through to be able to apportion the time required for discussion. Consequently, instead of ruling the Cabinet and regulating the length of the conversations, he left things much to themselves. We had no Secretary, no agenda, and no minutes in those days. The evils prevailed that we describe in the Machinery of Government Report, over which it fell to me to preside. . . . Indeed, I got the government of that day to appoint this Committee because I was keenly conscious of the necessity of bringing these and other evils to light. . . . The Cabinet of 1906 in the years which immediately followed was like a meeting of delegates. It consisted of a too large body of members, of whom two or three had the gift of engrossing its attention for their own business. The result of this and the want of system which it produced was that business was not always properly

<sup>20</sup> Cf. B. M. Allen, *Life of Sir R. Morant*, 1934.

<sup>21</sup> *Autobiography*, 1929, p. 253.

<sup>22</sup> *Ibid.*, p. 323.

<sup>23</sup> *Ibid.*, pp. 216-17.



discussed, and the general points of view which required clear definition almost never. Churchill was as long-winded as he was persistent . . . we lived as a government too much from hand to mouth . . . there ought to have been much more systematic consultation."

Another evil which influenced Lord Haldane considerably was the division of judicial functions between the Lord Chancellor's office and the Home Office. In a letter to Mr. Ramsay MacDonald in 1924 Lord Haldane wrote that a reform of justice on the lines described in the Machinery of Government Report is urgently required. "The Report which I as Chairman drew myself . . . was the outcome of long study and strong conviction."<sup>32</sup>

These extracts are sufficient to indicate how fitly this advisory body is known as the Haldane Committee.

### *Significance of the Report*

The Haldane Report is the most important constitutional document of recent years. Its significance is to be attributed, not so much to the value of its detailed recommendations, as to its recognition of the need for guiding principles in administration. As has been justly observed,<sup>33</sup> it made the most thorough examination since Bentham of the problem of the proper distribution of the functions of the executive. The emphasis it placed on the need for a determining principle in the allocation of these functions was a timely reminder that if efficiency in administration is to be safeguarded, administrative principles must be enforced regardless of these ephemeral exigencies of politics.

### *Recommendations*

The Report, a document of some eighty pages, is divided into two parts. In the first part the Committee defines the general principles that should govern the distribution of functions among the departments of State, while in the second the application of these principles is illustrated in detail.

The recommendations of the Haldane Committee are of sufficient importance to warrant quotation:<sup>34</sup>

"If the principle which we have suggested, that the business of the various departments of Government should be distributed as far as possible according to the class of service with which they are concerned, be accepted, the business

<sup>32</sup> *Autobiography*, pp. 322-23.

<sup>33</sup> K. B. Smellie, *A Hundred Years of English Government*, 1937, pp. 380-82.

<sup>34</sup> The detailed allocation of functions between departments is to be found in Part II of the Report.

of Government would fall into one or other of the following main divisions:—

I. Finance.

II & III. National Defence and External Affairs.

IV. Research and Information.

V. Production (including Agriculture, Forestry, and Fisheries),  
Transport and Commerce.

VI. Employment.

VII. Supplies.

VIII. Education.

IX. Health.

X. Justice.

It does not necessarily follow that there would be only one Minister for each of these branches. Some of them would undoubtedly require more than one.

We may summarize briefly the main principles to which we have drawn attention as follows:

(a) Further provision is needed in the sphere of civil government for the continuous acquisition of knowledge and the prosecution of research, in order to furnish a proper basis for policy.

(b) The distribution of business between administrative departments should be governed by the nature of the service which is assigned to each department. But close regard should be paid to the necessity for co-operation between departments in dealing with business of common interest.

(c) In the organization of individual departments special importance should be attached to securing proper consideration of proposals for expenditure, unimpaired Ministerial responsibility, co-operation with advisory bodies in matters which bring departments into contact with the public, and the extended employment of qualified women.

(d) A more efficient public service may expose the State to the evils of bureaucracy unless the reality of Parliamentary control is so enforced as to keep pace with any improvement in departmental methods.

In making these suggestions we are aware that an efficient departmental system working in satisfactory relations with Parliament cannot be established, or maintained, on lines laid down in advance by any Committee of inquiry. Whatever validity may attach in the abstract to the principles which we have ventured to suggest, their practical efficacy will depend upon the zeal and discretion with which they are applied from day to day by Parliament, by Ministers, and by the officers of departments, the living forces whose spirit is essential to any form of government that is more than a machine."

### *The Consequences of the Report*

The recommendations of the Haldane Committee have been followed in the creation of a Ministry of Health, in certain alterations effected in the organization of the Treasury and its method of co-operating with other departments, and in a notable advance in the provision made for investigation and thought as a preliminary to action.<sup>22</sup> But the adoption of these recommendations has been rather hap-

<sup>22</sup> K. B. Smellie, *op. cit.*, p. 383.

hazard in character, and broadly speaking, serves as a reminder that the claims of technical efficiency are less often regarded than those of political expediency. A drastic reorganization of Government on the general principle that the work of departments should be distributed according to the character of the service to be performed has not materialized. A Ministry of Production, a Ministry of Employment, a Ministry of Justice have yet to be established. But the recent co-ordination of the Service Departments does imply a recognition, if not a satisfaction, of the demand for a Ministry of Defence. On the other hand, it should be noted that the general principle recommended for the allocation of functions has not passed unchallenged, on the grounds of convenience and economy.<sup>28</sup>

The consequences of two of the more general recommendations of the Haldane Committee should also be recalled. The Committee was notably impressed with the need for an expansion in the use made of research as a preliminary to action. After a survey of the existing machinery, the Report maintains<sup>29</sup> that research must be carried out in relation to particular needs. In other words the Departments of State must provide themselves individually with distinctive organization for the prosecution of specific forms of research. But at the same time, the Committee recommended that a general research organization be established in order to assist the department in inquiries of a wider character and to encourage the development of intelligence and research work for general use. The conduct of an inquiry under the supervision of an organization should be modelled on the precedent of the Department of Scientific and Industrial Research. Indeed the Committee was impressed with the advantages of having the Lord President of the Council as a Minister responsible for research so long as the office was not burdened with excessive Parliamentary duties. When the Report was drafted the Lord President presided over only one advisory Council, but if the recommendation to establish such Councils for a substantial number of distinct branches of research were adopted, the increase in his duties would become incompatible with such Parliamentary duties as are normally devolved upon the holder of that office. This is clearly true; and one recalls how Lord Balfour on his appointment as Lord President in 1925 went round to the offices of the Medical Research Council and inquired

<sup>28</sup> Report of Committee: *Amalgamation of Services Common to Army, Navy, and Air Force*, Cmd. 2649; relevant extract quoted in Smellie, *op. cit.*, p. 384.

<sup>29</sup> See Part II.

rather diffidently whether he might be of any use. Though the Council had worked previously under some six or seven ministers, none had ever before found time to visit the offices.<sup>29</sup> But on the whole the recommendations for greater facilities for research have materialized along lines that show little trace of conscious planning. The office of the Lord President has not been used to any notable extent in the manner suggested in the Report. Instead, the growing complexity of the problems confronting the administration has resulted in the appointment of a network of committees designed to pass them under review, and if possible to suggest a means whereby difficulties in the particular field to which their attention is directed may be removed.

One of the most marked tendencies of administrative practice since the War has been the increasing dependence of the administration upon advisory bodies of one kind or another. The Haldane Committee recommended that such advisory committees should come to be regarded as an integral part of the normal organization of a department and their opinion is now generally accepted. From 1919 to 1939 the Ministry of Health made use of some 125 advisory committees, staffed in some part by non-official members. The Board of Trade in the same period had 76 advisory bodies, and they have been appointed in comparable numbers by other departments. In addition, there are the Advisory Bodies of an extra-departmental character. Of these the most notable is the Economic Advisory Council, established in 1930, and designed to provide the means for a continuous study of economic problems. It was placed directly under the Cabinet, with the deputy-secretary to the Cabinet as its Secretary. Its character is in accordance with the recommendations of the Haldane Committee, but its constitution is not, inasmuch as no individual minister is responsible for its work.

Finally it should be mentioned that the Cabinet now has a Secretary charged with duties similar in character to those suggested in the Report.<sup>30</sup> Lord Haldane himself noted the consequent increased efficiency. "Ramsay MacDonald," he wrote, "managed the Cabinet to which I belonged in 1924 more effectively than either Campbell-Bannerman or Asquith. But then he had Sir Maurice Hankey as Secretary, with an agenda paper and carefully drawn minutes in which the decisions were recorded." But the size of post-War Cabinets was

<sup>29</sup> Blanche E. C. Dugdale, *A. J. Balfour*, 1936, vol. ii, pp. 369-71.

<sup>30</sup> W. Ivor Jennings, *Cabinet Government*, 1936, pp. 186-89.

<sup>31</sup> *Op. cit.*, p. 217.

not appreciably reduced till after the outbreak of the War of 1939. Only the first National Cabinet of 1931 comprised as few as ten members, which was the number recommended by the Committee. Mr. MacDonald's formed in January 1924 had twenty members; Mr. Baldwin's Cabinet formed in November 1924 had twenty-one members; Mr. Chamberlain's Cabinet formed in 1937 had twenty-one members.

### *The Evidence Submitted to the Committee*

The quality of the Haldane Report invites the question: Why was it possible for this Committee to produce so authoritative a report on so complex a subject when the majority of Government committees fail to achieve a comparable result in more restricted fields of inquiry? Three reasons may be suggested. The Haldane Committee was small, its members were able and experienced, and finally the evidence submitted to it was of exceptional quality. This last point alone requires some little elaboration since it is a matter closely affecting the procedure of advisory bodies.

Unlike the Royal Commission on Electoral Systems the Haldane Committee did not examine witnesses publicly. Instead, the members were provided at the outset with detailed descriptions of the constitution and working of each Government Department. "Furnished with these confidential memoranda," writes Mrs. Webb, "they enjoyed the privilege of long confidential talks, not only with the officials who prepared or endorsed them, but also with officials of other departments, with Cabinet and ex-Cabinet ministers. By these consultations they were able to test, to correct, and to supplement the written information. In the ease and comfort of a private house, sanctified by the portraits of philosophers and jurists, exhilarated by tea and soothed by tobacco, all sorts of interesting sidelights emerged from this friendly clash of official minds, illuminating the work of particular departments (notably other people's departments), and revealing the relations—between the Cabinet, Parliament, the Civil Service, and the Press. The drawback to this method of taking evidence is that the yield is monopolized by a few privileged investigators and cannot be communicated to the public, except in so far as official discretion and political expediency permitted it to appear in a veiled fashion in the descriptions and recommendations included in the final Report."

*"Methods of Social Study*, pp. 149-52. Mrs. Webb was a member of the Haldane Committee.

IV. THE CONFERENCE ON THE REFORM OF THE SECOND  
CHAMBER

The Conference on the Reform of the Second Chamber assembled in 1917 and reported<sup>a</sup> in the following year.

A Conference is composed of members drawn in equal number from each House of Parliament. By its constitution it is a body more normally used and best suited to find a *modus vivendi* in the event of a dispute between Lords and Commons. But in this instance, as in that of the Conference on Devolution whose work is considered in the next section, it is clear that the Conference was appointed to fulfil an advisory function. Such was the expressed view of the Government at the time, and there appears no reason to dispute it. Consequently in this instance the Conference filled a role more usually reserved to Royal Commissions or departmental committees, and its work is reviewed for that reason in this survey of the work of advisory bodies in the reform of the machinery of government.

*The Terms of Reference*

The preamble to the Parliament Act of 1911<sup>b</sup> reads:

Whereas it is expedient that provision should be made for regulating the relations between the two Houses of Parliament:

And whereas it is intended to substitute for the House of Lords as it at present exists, a Second Chamber constituted on a popular instead of an hereditary basis, but such substitution cannot be immediately brought into effect:

And whereas provision will require hereafter to be made by Parliament in a measure effecting such substitution for limiting and defining the powers of the Second Chamber . . .

The Conference on the Reform of the Second Chamber was called by the Prime Minister on August 25, 1917. Its creation was admittedly a consequence of the constitutional crisis of 1910-11, yet its terms of reference differed in certain significant respects from the language of the Parliament Act. The terms of reference were to inquire and report:

"(i) As to the nature and limitations of the powers to be exercised by the reformed Second Chamber.

(ii) As to the best mode of adjusting differences between the two Houses of Parliament.

(iii) As to the changes which are desirable in order that the Second

<sup>a</sup> Cd. 9038.

<sup>b</sup> 1 & 2 Geo. V., ch. 13.

Chamber may in future be so constituted as to exercise fairly the functions appropriate to a Second Chamber."

The reason for this difference in language was that the Conference assembled in a very different atmosphere from that under which the Parliament Act had been passed. In 1911 a Liberal Government, in the face of the most bitter Conservative opposition, carried a constitutional reform twice endorsed by the electorate. In 1917 not a Liberal, but a Coalition, Cabinet was in office. Mr. Lloyd George was Prime Minister, but Lord Curzon, Lord Milner, Mr. Bonar Law and Sir Edward Carson were all members of the War Cabinet, whose total membership was then six. When one recalls the part played, especially by Mr. Bonar Law and Sir Edward Carson, in the constitutional crisis of 1910-11, then one can understand that the reform of the Upper House was no longer a policy pursued with the relentless zeal that had carried the Parliament Act. In addition the reformers of 1911, even if they had not provided a permanent solution of this constitutional question, had at any rate imposed a salutary restraint upon the exercise of those powers most resented by the Liberal Party. And as the edge of the grievance was blunted, so too the urge for reform lost vitality.

### *The Attitude of the Government*

For some time<sup>44</sup> before a definite reply was given, questions had been asked spasmodically in the House with a view to eliciting the intentions of the Government towards the Reform of the Lords. But it was not till August 16, 1917, that Mr. Bonar Law announced that a Conference was shortly to be called and that Lord Bryce had consented to act as Chairman. In reply to a question, Mr. Bonar Law stated it to be the view of the Government that this Conference should sit and confer in private and that it should not receive evidence.

It will be observed that the principle enunciated in the Parliament Act does not reappear in the terms of reference. The statement that the Second Chamber is to be "constituted on a popular instead of an hereditary basis" is watered down to a chamber "so constituted as to exercise fairly the functions appropriate to a Second Chamber." The House was given no opportunity to discuss these terms of reference, Mr. Bonar Law stating that "this is a Committee appointed by the Government to advise it."<sup>45</sup>

<sup>44</sup> E.g. *H. of C. Debates*, vol. 96, col. 36.

<sup>45</sup> *H. of C. Debates*, vol. 96, cols. 1399-1400.

*The Personnel of the Conference*

The Conference was composed of thirty members, fifteen drawn from each House. The personnel was distinguished. It included the Archbishop of Canterbury, eight members with Cabinet experience, namely, Lord Bryce, Lord Balfour of Burleigh, Lord Beauchamp, Mr Austen Chamberlain, Lord Grewe, Sir Charles Hobhouse, Lord Lansdowne, Lord Loreburn, and Lord Selborne, and a former Governor-General of Australia, Lord Denman. Its chairman, Lord Bryce, was the most able constitutional critic of the day. All parties were represented. The Unionist members of the Conference numbered fourteen, the Liberal twelve, the Nationalist two, and there was one Independent. While the Conference did not examine witnesses it was furnished by the Foreign Office with information on the constitution of Second Chambers in foreign countries and by the Colonial Office on Second Chambers in the self-governing Dominions. In particular the Conference was supplied by five distinguished French publicists (including Professor Barthélemy and M. André Leboucq, a former Minister of the Colonies and of Commerce), with detailed information as to the composition and working of the Senate in France.

The Conference assembled on October 2, 1917; it held forty-eight sittings and presented its report in April 1918.

*Summary of Recommendations*

Since the Report covers a complex field it is well for the sake of clarity to give a brief summary of its principal recommendations.

*Method of Composition*

The Second Chamber shall consist of two sections:

- (1) One section shall consist of 246 persons elected by panels of the Members of the House of Commons distributed in thirteen geographical groups.
- (2) The other section shall consist of 81 persons chosen by a Joint Standing Committee, in the first instance from Members of the House of Lords, but later the choice of the Standing Committee shall be unrestricted, except that the number of nominated Peers and Bishops in the Second Chamber shall not fall below 30.

*Tenure*

The tenure of office of Members of the Second Chamber shall be twelve years, one-third of the members retiring every fourth year.

*Powers of the Second Chamber*

At the beginning of each session a Joint Standing Committee on



Financial Bills is to be constituted. Its function is to decide whether or no a Bill may properly be described as a Financial Bill.

*Adjustment of Differences Between the Two Houses*

A Free Conference consisting of twenty members appointed by each House at the beginning of each Parliament, and in certain circumstances of an additional ten members with special knowledge of the matter in dispute appointed by each House, shall be set up in order to provide a recognized means of settling differences between the two Houses. In the event of final disagreement the will of the House of Commons, subject to certain qualifications, shall prevail.

*Parliament and the Report*

The Report of the Conference was published in April 1918, but, in view of the pressure of war work, the Cabinet was clearly in no position to act on the Report immediately, even had they wished to do so. A year later, however, replies from Government spokesmen seemed to indicate that the Government contemplated a reform of the House of Lords as soon as they had sufficient time at their disposal. In reply to a question in February 1919 Mr. Bonar Law said: "I hardly think it will be possible to deal with this subject during the present session; but the Government recognize its importance and its urgency." Further, Mr. Bonar Law stated that in his own view a reformed Second Chamber was needed.<sup>42</sup> In October of the same year he reiterated the statement that the Government "are quite alive to the necessity of doing something," and hoped that it would be possible to deal with the question in the next session.<sup>43</sup>

Though the Government procrastinated, their intention to deal with the Reform of the House of Lords continued to be stated in the most explicit form. The Archbishop of Canterbury later recalled the series of the promises that were made.<sup>44</sup> In the King's Speech in 1920 His Majesty said:

"Proposals will be laid before you during the present Session dealing with the Reform of the Second Chamber, and it is hoped that time will permit of their being passed into law."

This statement of policy was renewed in 1921 and finally in February 1922 the promise was repeated in a most specific form:

"Proposals will be submitted to you for the Reform of the House of Lords and for the adjustment of differences between the two Houses."

<sup>42</sup> *H. of C. Debates*, vol. 112, col. 1369.

<sup>43</sup> *Ibid.*, vol. 120, col. 689.

<sup>44</sup> *H. of C. Debates*, vol. 51, cols. 644-45.

If the Coalition Government intended to act, it delayed over long. The Prime Minister had said at the close of 1921 that while "I cannot state the order of precedence of Government business next year, a measure (for the Reform of the Second Chamber) will be among the first to be taken." To this Lieut.-Commander Kenworthy interjected the pertinent inquiry: "How do you know you will be here?" In fact, the Coalition Cabinet fell in the autumn of 1922, and the Conservative Government that succeeded had no desire to reform the Lords. On that Mr. Baldwin was explicit, saying in 1924 that the Government had no intention of introducing legislation for such a purpose.<sup>60</sup>

While the House of Commons had contented itself with questions, the House of Lords passed a Resolution in 1921 urging "H.M. Government to introduce at the earliest possible moment their measure for the Reform of the Second Chamber."<sup>61</sup> The Government responded by the introduction of resolutions for this purpose in July 1922. Their language was extremely vague. Lord Peel, who moved the resolutions on behalf of the Government, made the most of their rather meagre virtues. He said:

"Now I admit these Resolutions as set out are a sketch, and a general sketch . . . which will have to be filled up afterwards. I might even say that these outlines are themselves rich in undisclosed articulations. They are presented in the form of Resolutions and not as a Bill. The modern Merlins of draftsmanship have not yet applied to them the complicated canons of their mysterious art. The hand of the master is no doubt there, but it is the hand of a master not enmeshed or entangled in a wilderness of inordinate detail."<sup>62</sup> The opinions of other Peers were phrased less poetically. Lord Lansdowne referred to "this very half-baked scheme." Lord Buckmaster doubted whether "any resolutions more vague and tenuous were ever introduced to the notice of your Lordships' House." The Archbishop of Canterbury in a very critical speech described them as a "series of platitudes." The debate was notable both for an outspoken denunciation of the Government's evasion of a most important constitutional question and for the tributes paid to the Report of the Bryce Conference. It is of interest to observe that while several speakers suggested that modifications might be required in the proposals for the composition of a Second Chamber embodied in that Report, there was a general feeling

<sup>60</sup> *H. of C. Debates*, vol. 148, col. 596.

<sup>61</sup> *H. of C. Debates*, vol. 169, col. 1306.

<sup>62</sup> Moved by Lord Selborne, a member of the Bryce Conference.

<sup>63</sup> *H. of C. Debates*, vol. 51, col. 526.

that the Conference had admirably defined the proper functions and duties of a Second Chamber. Moreover, the House was conscious of a need for reform, if a bi-cameral legislature were to remain an integral part of the English constitutional system. It was Lord Buckmaster who pertinently remarked that he had always been "apprehensive lest, in the quick changes that are taking place in popular opinion, we may find a Government installed in the House of Commons which will be quite unable to obtain effective representation in this House under its present constitution,"<sup>53</sup> and he added prophetically, "supposing for a moment the Labour Party be returned to power not necessarily at the next election, but at the one that follows, how could it possibly work with this House constituted as it now is." A realization of this, and other problems confronting the Upper House led to a very strong expression of opinion condemning the Government on the one hand for introducing inadequate proposals and on the other for ignoring the recommendations of the Bryce Report.

Since 1910 there have been in all four attempts to find a basis for a new Upper House. Two of these have already been discussed, the Bryce Conference, and the coalition Cabinet's proposals of 1922. There followed in 1925 rather similar proposals sponsored by Lord Cave. Finally in 1932 certain proposals for reform were put forward by Lord Salisbury. They were of a pronounced conservative character, and Lord Salisbury's chief concern was to strengthen the powers of the Upper House so that it might be in a position to resist ill-considered or revolutionary legislation. The general question of reform was the subject of debate in the House of Commons in November 1932.<sup>54</sup> The most notable feature of the debate was the apathy with which the question of a reformed Second Chamber was regarded by members of all parties. The House adjourned without voting on the motion of Mr. Raikes that "this House is of the opinion that a Reform of the Second Chamber is a matter of vital importance which should be dealt with without delay." Thereafter the Government consistently declined to undertake the task in the immediate future.<sup>55</sup>

### *The Value of the Report*

Two general criticisms of the Report may be suggested. In the first place, it may be criticized on the ground that its recommendations are the product of compromise, and that as a consequence, they are

<sup>53</sup> *H. of L. Debates*, vol. 51, col. 558.

<sup>54</sup> *H. of C. Debates*, vol. 272, cols. 892-955.

<sup>55</sup> E.g. Statement in *H. of C. Debates*, 1935-36, vol. 309, col. 32.

not conclusive in character. This criticism has some substance, since there was not absolute unanimity amongst the members of the Conference on many important questions, and Lord Bryce had continually to readjust the opinions of his colleagues.<sup>22</sup> On the all-important question of the principle to be adopted for the composition of the Second Chamber, there were two clearly opposed views. One advocated filling the House with the largest available number of eminent and distinguished men; the other advocated the creation of a Chamber which would be most quickly responsive to public opinion. The Conference attempted to combine the advantages of both and Lord Bryce maintained that it was impossible "to give full scope and application to either of these principles and to secure in ample measure the benefit of either source of strength without losing some of the merits to be expected from the other." Only practical experience could decide to what extent this necessity for compromise vitiated the value of the conclusions reached.

The other criticism generally levelled against the Bryce Report is that its conclusions are too academic in character to be workable. In support of this criticism attention is directed both to the artificial character of the "groups" of members of the Commons designed to elect the large majority of the members of the Reformed Second Chamber and to the excessive number of Joint Standing Committees to be selected at the opening of each Parliament. This criticism is substantially one of detail and does not carry much conviction.

In general it may be said that the Bryce Report, which attempted for the first time a survey and a solution of all the major questions affecting the structure and powers of a Second Chamber, remains one of the most important constitutional documents of our time.

#### *The Conference as an Advisory Body*

The Conference on the Reform of the Second Chamber was appointed to advise the Government. Since its recommendations were not embodied in legislation, its primary purpose has remained unfulfilled. This lends an air of frustration to its work which is not wholly warranted. The Conference, composed of most distinguished men of both Houses, who were representative of all parties, was admirably constituted to advise on this difficult and controversial constitutional question. It was a committee of the Legislature advising on a problem affecting the structure of the legislature. Few would deny that its analysis and its investigations into the precise character of the problem

<sup>22</sup> Cf. Lord Selborne, *H. of C. Debates*, vol. 51, col. 550.

involved were lucid in statement and lasting in value. It was political considerations, not the inadequacy of work done by the Conference, that postponed the Reform of the Second Chamber.

## V. THE CONFERENCE ON DEVOLUTION

The Conference on Devolution assembled, in consequence of a Resolution of the House of Commons, in the autumn of 1919. The Report was submitted to the Prime Minister early in 1920.<sup>87</sup> The Terms of Reference invited the Conference to "consider and report upon a measure of Federal Devolution applicable to England, Scotland, and Ireland. . . ."

### *Its Antecedents*

The increase of the functions of government in the last half-century is a matter of everyday comment. "The most distinctive indication of the change of outlook of the Government of this country in recent years," declared the Macmillan Report, "has been its growing preoccupation, irrespective of party, with the management of the life of the people. A study of the Statute Book will show how profoundly the conception of the function of government has altered. Parliament finds itself increasingly engaged in legislation which has for its conscious aim the regulation of the day-to-day affairs of the community and now intervenes in matters formerly thought to be quite outside its scope."<sup>88</sup> This change in outlook has involved a very considerable addition to the work to be undertaken by the Central Government. In the earlier years of the century a body of distinguished critics, mostly Liberal in their political affiliations, maintained that the Parliamentary timetable was overcrowded and that the burden now thrown on the Central Government was so weighty as to impair the efficiency both of Parliament and of the administration. They argued that devolution provided the proper remedy for such excessive centralization.

The merits and defects of devolution as a means whereby the functions of the Central Government might be diminished were rarely considered on constitutional grounds alone. Since Mr. Joseph Chamberlain had advocated federal devolution as an alternative to Home Rule for Ireland in 1885, the question had become inextricably entangled in the meshes of Anglo-Irish political controversy. Mr. Chamberlain had designed proposals which would repudiate by impli-

<sup>87</sup> Cd. 692.

<sup>88</sup> *Report of the Committee on Finance and Industry*, pp. 4-5.

cation the distinctive character of the Irish Question; Mr. Gladstone later acknowledged<sup>70</sup> that there was no objection in principle to Home Rule for Scotland, provided the Scottish people expressed a clear wish for some such measure of devolution; Mr. Asquith accepted the principle of Home Rule-all-round but claimed that the Irish Question was of far more importance both in point of time and urgency. Mr. Gladstone and Mr. Asquith recommended federal devolution on the ground that it would "free Parliament for the great and necessary task of government." But they were not insensible to the incidental advantage, so apparent to Mr. Chamberlain, that a grant of Home Rule, followed even by some more restricted measure of devolution to Wales and Scotland, would deprive the Irish claim of its distinctive national character. In moving the motion for a measure of federal devolution in the House in 1919, Major Wood elucidated the dual motive inspiring its advocates. "I have always held the view—and it has been shared in all parts of this House—that the isolated treatment of Ireland inevitably increases the danger of separation, for the simple reason that demands pressed against a Central Parliament by a single subordinate assembly become evidently absurd, and impossible, when you are dealing with one central and several subordinate assemblies."<sup>71</sup> In this way devolution had acquired a political significance that was almost entirely irrelevant to the essential constitutional purpose of such a reform.

### *The Appointment of the Conference*

These two distinct motives—the political motive and the constitutional motive—which prompted earlier proposals for devolution, must be recalled if one is to judge the value of the work done by the Conference of 1920. Though devolution had been advocated by distinguished statesmen as the proper remedy for undue centralization, though it had been the subject of discussion in intellectual circles for many years, it was more than doubtful whether it possessed a source of political vitality sufficient to carry a major constitutional reform once it was dissociated from the urgent demands of the Irish Question. The Conference appointed in 1920, largely with the object of shelving a proposal advocated by a small but persistent minority, confirmed this doubt and produced a Report discouraging even to the most ardent advocates of constitutional reform on such lines.

<sup>70</sup> In the Scottish Home Rule Debate, 1889.

<sup>71</sup> *H. of C. Debates*, vol. 116, col. 1881.

The appointment of the Conference on Devolution was preceded by a debate in the House of Commons on June 3rd and 4th, 1919. The debate was of a rather desultory character, and acquired vitality only when questions affecting Ireland were discussed. Mr. Long informed the House that the Government had decided to allow a free vote. It was resolved by a majority of 137 to 34 that: "<sup>1</sup>

"With a view to enabling the Imperial Parliament to devote more attention to the general interests of the United Kingdom and, in collaboration with the other Governments of the Empire, to matters of common Imperial concern, this House is of the opinion that the time has come for the creation of subordinate legislatures within the United Kingdom; and to this end, the Government, without prejudice to any proposals it may have to make with regard to Ireland, should forthwith appoint a Parliamentary body to consider and report:

(1) upon a measure of Federal Devolution applicable to England, Scotland, and Ireland, defined in its general outlines by existing differences in law and administration between the three countries;

(2) upon the extent to which these differences are applicable to Welsh conditions and requirements; and

(3) upon the financial requirements of the measure."

#### *The Type of Body Appointed and Its Composition*

No member of the War Cabinet had taken part in the Commons debate of June 3rd and 4th, and Mr. Long was the only member of the Government who spoke. This indifference on the part of the Government was made the more apparent by the appointment of a Conference to inquire into the problems of a measure of federal devolution. Such a body, composed in equal parts of members of either House of the legislature, was not the type of committee best equipped to judge a constitutional issue of this kind. Acknowledged experts on devolution who were not members of either House could not be invited, men experienced in local government work of a kind that would be intimately affected by a measure of devolution were excluded on the same ground, and—most serious of all—the Conference by its constitution was deprived of the advice of those engaged in the routine work of administration. Since devolution was designed to relieve the organs of central government from an excessive burden, it was remarkable indeed that representatives of the administration should not be invited to collaborate on a committee whose work was

<sup>1</sup> *Ibid.*, vol. 116, col. 1904.

expressly concerned with the administrative consequences of devolution.

Criticisms prompted by the constitution of this advisory body can scarcely be countered by a reference to the distinction of its personnel. On the contrary, it must be confessed, that the list of members was unimpressive. It is true that the names of two members of pre-war Liberal Cabinets, Lord Gladstone and Lord Harcourt,<sup>42</sup> were to be found in the list of sixteen peers, but these two distinguished men were respected rather than vital forces in post-war politics. There were no members with Cabinet experience from the Commons.<sup>43</sup> All parties were represented. The sixteen peers included nine Liberals and six Unionists; the sixteen M.P.s included five Liberals, three Labour, and eight Unionists. Since the conference agreed that the national areas of England, Scotland, and Wales should be the units in a scheme of federal devolution, it is of interest to observe that the representatives of the Commons numbered five members for Scottish, four for Welsh, and two for Ulster constituencies.<sup>44</sup> The Speaker, Mr. Lowther, presided

### *The Report*

The Resolution of the House of Commons was carried on June 4, 1919. The Conference met for the first time on Tuesday, October 23rd. It held thirty-two sittings. The Report was submitted to the Prime Minister in April 1920.

The Report<sup>45</sup> is not an impressive document, largely because the Conference was unable to reach any agreement on the fundamental point of the composition of the local legislatures. Consequently the Report consists of seven pages detailing the points on which the Conference was agreed, followed by six appendices occupying thirty pages almost entirely devoted to two alternative proposals for the constitution of local legislatures and to criticisms of each of these proposals. If the Cabinet wished to shelve the question of devolution, their purpose could scarcely have been more simply achieved than by the publication of this Report.

### *Analysis of Its Contents*

To say that the Report does not carry conviction is not to say that it has no value. On the contrary, it is a very instructive document, indi-

<sup>42</sup> Lord Gladstone was Home Secretary from 1905 to 1910. Lord Harcourt was Secretary for the Colonies 1910-15. He resigned from the Conference later.

<sup>43</sup> Mr. W. Graham and Mr. R. McNeill were later to attain Cabinet rank.

<sup>44</sup> To whom one should add Mr. R. McNeill, an Ulster Unionist, who did not sit for an Ulster constituency.

<sup>45</sup> Cmd. 692.



cating (in a rather exaggerated form as the experiment in Northern Ireland has shown); the difficulties likely to be encountered in enacting a scheme of federal devolution.

The terms of reference introduced certain limitations in the scope of the inquiry. The Conference was to consider and report upon a scheme of legislative and administrative devolution within the United Kingdom having regard to:

- (i) The need of reserving to the Imperial Parliament the exclusive consideration of:
  - (a) Foreign and Imperial affairs: and
  - (b) Subjects affecting the United Kingdom as a whole.
- (ii) The allocation of financial powers as between the Imperial Parliament and the subordinate legislatures, special consideration being given to the need of providing for the effective administration of the allocated powers.
- (iii) The special needs and characteristics of the component portions of the United Kingdom in which the subordinate legislatures are set up.

The Conference understood from these terms of Reference that it was not required to pronounce for or against the principle of devolution, but only to consider what, if devolution be accepted, is the most practical way of putting it into operation. As the Government proposals for Ireland had been formulated before the first meeting of the Conference, the inquiry was restricted to Great Britain alone.

The Conference reached agreement upon four of the five principal questions at issue:

- (i) The Areas which the local legislatures were to administer should be the national areas of England, Scotland and Wales.
- (ii) The Powers which should be devolved upon the local legislatures were satisfactorily defined.
- (iii) A scheme for financial arrangements as between the United Kingdom and the local Exchequers, and
- (iv) A scheme for dividing the Judiciary for United Kingdom and local requirements were accepted.

The Conference was divided upon:

- (v) The character and composition of the local legislatures.

The Conference devoted more attention to the composition of the local legislatures than to any other topic, and the fundamental cleavage of opinion on this point at least served the purpose of elucidating all possible objections to the more generally accepted means of constituting such bodies. Two proposals were put forward, and the sponsors of each proposal displayed a zeal, that amounted at times to animosity, in the destruction of the rival plan.

A radical solution, associated with the name of Mr. Murray MacDonald, advocated the creation of local legislatures with separate elections. The opponents of this solution were so impressed with its disadvantages that they felt driven to oppose the principle of devolution itself. In a vain attempt to bridge the gulf the chairman, Mr. Speaker Lowther, submitted an alternative proposal of more modest character. The intention of his proposal was to make the least possible change in constitutional structure compatible with any scheme of devolution. He suggested the creation of Grand Councils composed of members of both Houses of Parliament representing the national areas of England, Scotland, and Wales. The Councils involved an extension of the Standing Committee system, but not a new departure in principle. The scheme was definitely of a transitional character.

#### *Parliament and the Report \**

The debate in the Commons in 1919 indicated that devolution was not a matter of much interest either to the Government or to the majority of the House itself. The publication of the Report disconcerted even the enthusiastic. No Government could act on the recommendations of so indecisive a document; and in this particular instance everything pointed to a reluctance on the part of the Government to act in any circumstances. It is a matter therefore of no surprise to learn that the Report was never debated in the House. For some time ministers were questioned as to whether they intended to enact a scheme of federal devolution. The replies, at first evasive, were later in the negative."

#### *The Value of the Report*

The House of Commons had resolved that "this House is of the opinion that the time has come for the creation of subordinate legislatures within the United Kingdom." The intention was, therefore, that the Conference Report should determine how devolution might be put into practice. The Conference was not asked to decide for or against the principle of devolution. The principle had been accepted. It was to determine its application. The Conference was a body appointed to advise the Government on how to overcome practical difficulties. The Conference failed in this purpose since it was unable to reach agreement on the most important practical question at issue.

"A criticism of the recommendations of this Report is to be found in my book, *The Government of Northern Ireland, A Study in Devolution*, 1936, ch. iv.

"E.g. *H. of C. Debates*, vol. 140, col. 19; vol. 139, col. 1025.

In other words, the Conference Report could not be accepted as a preliminary to legislative enactment.

To mention that the Conference failed to achieve its stated objective is not to say that the work it accomplished is of no value at all. On the contrary, it did perform effectively one of the duties normally referred to advisory bodies regardless of their particular constitution. It did investigate the difficulties confronting a particular constitutional reform. The Report did bring to light many points that had hitherto been obscure, it consolidated in a reasonably concise document most of the available knowledge on the subject, and it remains a constitutional landmark of no little significance. But the Conference was not appointed to investigate, it was appointed as a preliminary to action.

*Some Critical Comments on the Conference as an Advisory Body*

It might well be argued that the Resolution stating that the House is of the opinion that "the time has now come" for a measure of federal devolution should not be taken at its face value. That no doubt is true. Many of the members who voted for the motion would have been surprised, and perhaps dismayed, had the publication of the Report been followed by legislative enactment. None the less one cannot overlook, because of mental reservations of this kind certain very pertinent criticisms of the Conference acting as an advisory committee on an important constitutional reform.

The criticisms are twofold in character. In the first place a Conference, that is to say a body drawing its members in equal measure from the two Houses of Parliament, is not fitted by its constitution to inquire into a measure of "legislative and administrative devolution." Since administrative considerations were of an importance at least equal to the legislative, not only in respect of the relations to be established between local and central authorities, but also in regard to the alleviation of the excessive burden imposed upon the Central Government, it was scarcely wise that membership of this committee should be confined exclusively to members of the legislature.<sup>68</sup> In the second place, it is clear either that the terms of reference were unfortunately drafted or that the personnel of the Conference was unhappily selected. The Chairman ruled that the terms of reference did not require the Conference to pronounce for or against the principle of devolution, but only to consider the most practical way of putting it into operation. His interpretation is not open to question, but the value of

<sup>68</sup> One distinguished ex-Civil servant, Lord Southborough, was a member of the Conference.

the investigation undertaken by the Conference would have been notably increased had it, in the light of all the available evidence, embraced an answer to the question whether or no devolution was in fact a desirable reform. If, however, the terms of reference are regarded in their restricted form, then surely the Conference should have been composed of men who accepted the premises upon which the Conference was to work, men who agreed that devolution was a necessary and desirable reform, and who were concerned to give it practical effect. But in fact an examination of the voting in the House of Commons reveals that of the sixteen members drawn from that House six were not sufficiently interested to take part in the division and one opposed the resolution. In other words, a substantial proportion of the members of the Conference did not support the principle involved, and the last memorandum of the document shows that three members were hostile to the principle itself. It is more than doubtful whether men who do not endorse a principle are most suited to assist in preparing a scheme to give it practical realization. The extreme consciousness of every defect in any proposal for subordinate legislatures displayed by members of the Conference might be attributed more to their mistrust of the principle involved than to their perception of the inadequacy of particular proposals under review.

The defects in the constitution and in the personnel of the Conference produced something approaching indifference. The Chairman, Mr. Speaker Lowther, later recalled the atmosphere that prevailed.<sup>70</sup> "The discussions," he wrote, "had been of great interest as they raised recondite and sometimes difficult questions of constitutional law, but all along I felt they were academical rather than practical, and that the driving force of necessity—which had been so active a force in the Electoral Reform Conference—was absent."

## VI. THE COMMITTEE ON MINISTERS' POWERS

The Committee on Ministers' Powers was appointed by the Lord Chancellor, Lord Sankey, in October 1929, to consider "the powers exercised by or under the direction of Ministers of the Crown by way of (a) delegated legislation, and (b) judicial or quasi-judicial decision, and to report what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the law."<sup>71</sup>

<sup>70</sup> *A Speaker's Commentaries*, 1925, vol. ii, p. 271.

<sup>71</sup> Mr. Robson's comment on these terms of reference is not without interest: "there we have the curious spectacle of the conclusions at which the Committee

The notable increase in the volume of work to be performed by the organs of the Central Government since the beginning of the century has necessitated a delegation of function to inferior authorities. The practice has been evolved to meet the growing demands upon the Central Government; it was not formally established by comprehensive legislative enactment. Delegated legislation is common to-day simply because Parliament in the United Kingdom, as elsewhere, has not the time to compile statutes so minutely detailed as to meet every possible situation which may arise. As Professor Laski has written, "what is always typical of the modern State is that over and above the general law-making authority, there will be found a number of subordinate authorities with the power to bind citizens as though they were making statutes."<sup>11</sup>

The number of statutes enacted by Parliament (contrary to common belief) has not increased in the last half-century. 117 statutes were enacted in 1871, 91 in 1873, 36 in 1904, 58 in 1911, 82 in 1920, 39 in 1929, 58 in 1934. But the field now covered by legislation is immensely wider since the Government, irrespective of party, has become increasingly preoccupied with the management of the life of the people. As the Macmillan Report<sup>12</sup> observed, "Parliament finds itself increasingly engaged in legislation which has for its conscious aim the regulation of the day-to-day affairs of the community and now intervenes in matters formerly thought to be quite outside its scope. The new orientation has its dangers as well as its merits. Between liberty and government there is an age-long conflict. It is of vital importance that the new policy, while truly promoting liberty by securing better conditions of life for the people of this country should not, in its zeal for interference, deprive them of their initiative and independence which are the nation's most valuable assets."

The Committee on Ministers' Powers was appointed not to inquire into the principal danger held to be inherent in the new policy, but to examine the particular methods by which it is carried out. Of these the most notable is the practice of entrusting legislation and judicial functions to the executive. The extent of the powers so devolved in post-war years was regarded with no little misgiving by a considerable

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is expected to arrive being embodied in its terms of reference. The Committee started life with the dead hand of Dicey lying frozen on its neck." *Vide* article in *Political Quarterly*, vol. iii, 1932.

<sup>11</sup> *Grammar of Politics*, 1926, p. 388.

<sup>12</sup> Cmd. 3897, 1931.

proportion of the public. Mr. Carr<sup>12</sup> had pointed out that in 1920, while eighty-two Acts of Parliament were placed on the statute book, more than ten times as many Statutory Rules and Orders of a public kind were officially registered under the Rules Publication Act. The second volume of the Public General Acts for 1920 occupied less than six hundred pages, while for this year the two volumes of Statutory Rules and Orders occupied about five times as many. Though the proportionate excess of delegated legislation had diminished to some little extent since 1920, there clearly existed a *prima facie* case for a properly constituted inquiry into the powers delegated by Parliament, the more so since the practice of delegation had been adopted from time to time under pressure of circumstances, and Parliament had pursued this course without fully examining its attendant risks. The practice of delegation was admittedly used much less in the United Kingdom than in certain continental countries such as France, where the enactment of a very short statute put into operation by a series of complicated ministerial decrees is the accepted practice; but in the United Kingdom, where the authority of the administration has always been viewed with mistrust, the introduction of a similar practice was held to be at variance with tradition, to threaten the legislative supremacy of Parliament and to constitute an insidious menace to the liberties of the subject.

The growth of delegated legislation has resulted in the execution of judicial functions by administrative bodies. In certain instances this has resulted in the exclusion of the ordinary Courts from scrutiny of their decisions. The potential danger to the liberty of the individual from the growth of such a system of law was emphasized in a book, *The New Despotism*, by the Lord Chief Justice, published in 1929, the year of the Committee's appointment. Armed with a title nicely calculated to arouse the worst misgivings, Lord Hewart came with turbulent impetuosity to the defence of those principles for which "Hampden had died in the field and Sidney on the scaffold." The strictures on Ministerial Tribunals received a wide publicity. Lord Hewart wrote:

"Save in one or two instances none of the Departments publishes any reports of its proceedings, or the reasons for its decisions, and as the proceedings themselves, if any, are invariably held in secret, even interested parties have no means of acquiring any knowledge of what has taken place or what course the Department is likely to take in

<sup>12</sup> C. T. Carr, 1921, *Delegated Legislation*, p. 2.

future cases of the same kind. A Departmental Tribunal is, however, in no way bound as a Court of Law to act in conformity with previous decisions, and this fact is commonly regarded as one of the reasons for a policy of secrecy. Others may think that the Department is afraid to disclose inconsistencies and a want of principle in its decisions. However that may be, the policy is fatal to placing any reliance on the impartiality and good faith of the tribunal. It is a queer sort of justice that will not bear the light of publicity." "

Criticisms so sweeping made it very desirable that the public should be reassured by a thorough investigation into the working of the new constitutional machinery.

### *The Personnel of the Committee*

Lord Donoughmore was appointed Chairman of the Committee, but on his resignation in 1931 was succeeded by Sir Leslie Scott, K.C. The Committee was composed of seventeen members and aspired to be both "expert" and "representative." There were two members of the Lords and six M.P.s; of the latter three were Labour, two Unionist and one Liberal. There were five King's Counsel, a solicitor, two Civil servants of outstanding distinction, Sir John Anderson and Sir Warren Fisher, three professors including Sir William Holdsworth and Mr. H. J. Laski. Though appointed by a Labour Lord Chancellor the Committee was predominantly Conservative in character.

The Committee was appointed in 1929; its Report was published in 1932." The expenses incurred in preparing the Report amounted to the modest total of 241 pounds, of which 158 pounds represented the cost of printing and publication.

### *The Evidence*

The evidence examined ranged from the considerable body of literature on this subject to departmental memoranda and written or oral evidence from other persons or organizations. Among the books to which the Report refers, C. K. Allen's *Law in the Making*, F. J. Port's *Administrative Law*, and W. A. Robson's *Justice and Administrative Law* may be mentioned in addition to those of Mr. Carr and Lord Hewart to which reference has already been made. The departmental memoranda were valuable statements of the type of powers devolved and of the conditions of their exercise. These memoranda are reprinted in the first companion volume to the Report. They were later supple-

"*The New Despotism*, 1929, pp. 48-9.

"Cd. 4060.

mented by oral and written evidence from certain selected departments and official witnesses, as Sir Maurice Gwyer and Sir William Graham-Harrison.<sup>16</sup> Finally, evidence was received from certain unofficial witnesses and from a number of influential organizations, as the Association of British Chambers of Commerce, the Federation of British Industries, and the Law Society.<sup>17</sup> The evidence thus submitted will be found in the second companion volume to the Report.

In all the Committee held fifty-four meetings at twenty-two of which oral evidence was taken.

*Analysis of the Report*

The Report is a document of some considerable length<sup>18</sup> divided into three sections. The first is introductory; the second and third deal with delegated legislation and judicial or quasi-judicial decisions respectively. The recommendations on delegated legislation embodied in the Report were of a conservative character. The principle of delegation was approved. The Report states:

"We do not agree with those critics who think that the practice is wholly bad. We see in it definite advantages, provided that the statutory powers are exercised and the statutory functions performed in the right way. But risks of abuse are incidental to it, and we believe that safeguards are required, if the country is to continue to enjoy the advantages of the practice without suffering from its inherent dangers. . . . In truth, whether good or bad, the development of the practice is inevitable."<sup>19</sup>

The specific safeguards suggested by the Committee were for the most part designed to secure greater precision and to eliminate illogical discrepancies in language and procedure. In addition the appointment of a Standing Committee was recommended in order to keep Members of Parliament informed, both as to the nature of the legislative powers which it was proposed to delegate in any particular Bill, and of the general characteristics of the regulations made in the exercise of such powers. The Committee would consider a Bill containing any such proposal for delegation with as little delay as possible and would then report to the House whether the powers to be conferred were wholly normal or in any respect exceptional in character. The procedure was designed so as to ensure that the report

<sup>16</sup> The former at that time Treasury Solicitor and the latter at that time First Parliamentary Counsel.

<sup>17</sup> A full list given on p. 3 of the Report.

<sup>18</sup> 138 pages.

<sup>19</sup> *Vide* p. 4.



of the Standing Committee should be a condition precedent to further progress of the Bill.

The Committee also recommended that judicial (as distinct from quasi-judicial) functions should normally be entrusted to the ordinary Courts of Law and that their assignment by Parliament to an executive authority should be regarded as exceptional and requiring justification in each case.

### *The Value of the Report*

The more important constitutional recommendations of the Donoughmore Committee have not received a legislative sanction. In 1935 in reply to a question, dealing more particularly with the constitution of the proposed Committee to consider regulations and orders made by virtue of delegated authority, Mr. Baldwin said that the Government could not hope to find any opportunity of dealing with the conclusions of the Report in the present circumstances.<sup>80</sup> On the adjournment debate for the summer recess in the same year Mr. Dingle Foot urged a full discussion of the Report. In his reply the Solicitor-General, Sir Donald Somervell, was evasive. He said, "The Report makes a number of recommendations as to the form which legislation should take. The Government may or may not adopt those recommendations. I have been given two examples of cases where they have not been adopted. I could, if I had time, give examples of cases in which they have been adopted. It would be quite wrong if the House were left with the impression that this was a report which had been put in a pigeon-hole."<sup>81</sup> On the particular and important recommendation of a Standing Committee to examine Bills, Sir Donald doubted whether in fact it would be possible for a Committee of this kind to separate principles from details in the way suggested in the Report. Mr. Robson, writing some two years earlier, had also questioned the ability of the Committee to report on form while avoiding judgment on substance.<sup>82</sup>

It would be a mistake, however, to suppose that the only, or indeed the most important, task of the Donoughmore Committee was to make specific recommendations. It had also to determine what foundation, if any, existed for the attacks, sometimes unrestrained in character, that had been made on the growth of executive power. Lord Hewart,

<sup>80</sup> *H. of C. Debates*, 1934-35, vol. 298, cols. 2125-26. (A Statutes Revision Committee was appointed in 1944 to consider such regulations.—Ed.)

<sup>81</sup> *H. of C. Debates*, vol. 304, cols. 3087-92.

<sup>82</sup> Article in *Political Quarterly*, vol. 3, 1932.

to take the most notable instance, had pointed out that there was a persistent influence at work which had the undoubted effect of placing a large and increasing field of departmental authority beyond the reach of ordinary law. Thus, what he called a despotic power was created which placed the Government Department above the sovereignty of Parliament and beyond the jurisdiction of the Courts. He then remarked that the growth of delegation to Government Departments had proceeded side by side with a growth in the number of Government officials and suggested that "it was the officials in the departments concerned who initiate the legislation by which arbitrary powers are conferred upon them."<sup>13</sup> The Report refutes this charge, saying, "We see nothing to justify the lowering of the country's high opinion of its civil service" or "any ground for believing that our constitutional machinery is developing in directions which are fundamentally bad." If the right safeguards are taken "there is no ground for public fear." The suggestion that the growth of departmental powers is due to an attempt by the civil service to secure arbitrary power for themselves "is unsupported by the smallest shred of evidence."

The Report of the Donoughmore Committee, in fact, reassured the public and removed the spectre of a new despotism. In addition, its recognition of the need for delegated legislation, a recognition rendered the more impressive by reason of the conservative character of the Committee and its obvious reluctance to acknowledge a development admitted to be inevitable, has and will clearly continue to have, far-reaching consequences upon the future relationship between legislature, executive and judiciary in the United Kingdom. Approval of its particular recommendations was general. Mr. Robson wrote, "Taken as a whole the recommendations of the Committee on delegated legislation seem to be exceedingly good."<sup>14</sup> Mr. Jennings said, "The Report, though based fundamentally upon a reactionary philosophy, is realistic in character, and may be accepted both in respect of its recognition of the need for delegating legislative powers and of the necessary safeguards which ought to be imposed."<sup>15</sup> The most far-reaching criticism was contained in two appendices to the Report, in which it was argued that the practice of Parliament delegating legislation and the power to make regulations ought to be widely

<sup>13</sup> *Op. cit.*, p. 52. *Vide also* Robson's article in *Political Quarterly*.

<sup>14</sup> *Op. cit.*

<sup>15</sup> *Parliamentary Reform*, chapter v.

extended instead of being grudgingly conceded, and new ways devised to facilitate the more rapid extension of social services in the modern State.<sup>66</sup>

## VII. SOME GENERAL CONSIDERATIONS ON THE USE OF ADVISORY BODIES IN CONSTITUTIONAL REFORM

### *The Relative Importance of Advisory Bodies*

In order to see the work of such committees as fall within our survey in proper perspective, it is essential to recall that the appointment of an advisory body is not an invariable antecedent to constitutional reform. On the contrary, reference to an advisory body has occurred only when the subject to be examined is not of an urgent political character. The provisions of the Parliament Act were determined by the policy of the Liberal Cabinet, and not in accordance with the recommendations of a committee which had inquired into the proper distribution of powers in a bi-cameral legislature. The Conference on the Reform of the Second Chamber was not appointed till 1917, in other words, not until the powers and composition of the Upper House had ceased to be a matter of acute political controversy.

The fact that no advisory body was appointed preparatory to the legislation of 1911 indicates what may be termed the political restriction on their use. This restriction has a constitutional counterpart imposed by the flexibility of British constitutional machinery, which enables important changes in constitutional practice to take place without legislative sanction. The gradual evolution of the Cabinet system, for example, normally renders impracticable investigation of any departure from established convention by a committee of inquiry.

This may be illustrated by an important point of constitutional usage in which some change seems to have occurred in recent years. Lord Oxford and Asquith says quite definitely that "such a question as the dissolution of Parliament is always submitted in the Cabinet for ultimate decision."<sup>67</sup> There is the equally good authority of Mr. Baldwin's speeches for the statement that there was no discussion in the Cabinet of the dissolution in 1935, and this would seem to have been true of all the post-war dissolutions. It would be going too far to represent this, as Dr. Jennings does, as a change in a rule of the

<sup>66</sup> Annex VI and VII. Note by Miss Wilkinson approved by Prof. Laski.

<sup>67</sup> *Fifty Years of Parliament*, vol. ii, 1926, p. 195.

<sup>68</sup> W. Ivor Jennings' *Cabinet Government*, pp. 311-18, gives expression to the view here criticized.

constitution.<sup>48</sup> It is the Prime Minister who tenders advice to the King that Parliament should be dissolved, and the King does not ask whether the advice represents the "decision of the Cabinet." The Prime Minister is in constant and intimate association with his Cabinet colleagues, and must be fully aware of their wishes and opinions on such a question as the occasion for a dissolution of Parliament. Whether the matter is or is not actually discussed at a Cabinet meeting is a question of less importance than it may seem. During the period covered by Lord Oxford and Asquith's statement there were no Cabinet records. There are not to-day any rules of procedure or standing orders governing Cabinet business. There are changes in practice or in custom but not changes in rules. They are changes in the processes of a living organism, and the expediency of such changes is not a matter for discussion by, or recommendation from, an advisory body.

There are recent developments in other directions, on the whole of rather lesser constitutional importance, that have not been submitted to examination by an advisory body. The growth of semi-autonomous bodies, like the B.B.C., the Central Electricity Board, the Unemployment Assistance Board, which constitutes one of the most notable developments in the administrative machine since the War,<sup>49</sup> has not been the subject of an investigation designed to elucidate (say) their conformity with the doctrine of ministerial responsibility. Even more suggestive of the limited use normally made of advisory bodies is the fact that the Committee on Ministers' Powers was appointed, not to inquire into the advisability of extending the powers of ministers, but to determine, at a time when the growth of ministerial power was well established, the negative point of "what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the law."

In general, it may be said that the subjects referred to advisory bodies in the field of constitutional reform tend to be of a complex and somewhat academic character, such as require detailed investigation prior to the drafting of legislation. In this way proposals for reforms that occasion acute party feeling are excluded from their purview because normally such reforms are intended to provide a direct and drastic remedy, whilst for a different reason gradual developments in political and administrative practice cannot be referred to an advisory body at the moment of initiation without destroying the

<sup>48</sup> *Vide ibid.*, pp. 74-6.

essential character of a constitutional system which through the centuries has "broadened down from precedent to precedent."

*Some Critical Comments on the Composition of Such  
Advisory Bodies*

The most effective of the advisory bodies considered was that whose membership was smallest. The presumption so derived in favour of a small membership is supported negatively by the evidence of the Conference on Devolution. Here a membership of thirty encouraged the growth of rigid and ultimately irreconcilable divisions of opinion. In a smaller body a report embodying the "sense of the meeting" would surely have emerged in place of two propagandist and mutually destructive statements.

The case for small membership is confirmed in all instances where the representative principle of selection is accepted, for otherwise there is real danger that party divisions will be reproduced in miniature and so destroy the value of the committee's work. When the advisory body appointed is designed to be a committee of experts, then the objection against a larger membership would appear to be considerably diminished. But on the other hand the number of "experts" able and willing to serve on a particular committee must normally be limited. Consequently it may be concluded that a membership of thirty such as served on the Conferences on Devolution and on the Reform of the Second Chamber, tends to introduce divisions without bringing any compensating advantages, and that advisory bodies of that size should therefore be avoided. The Haldane and Donoughmore Committees suggest that the ideal figure would lie somewhere between seven and fifteen.

*Expert or Representative Membership?*

The material at one's disposal in the field of constitutional reform is too limited to enable one to pronounce judgment on the relative value of "expert" and "representative" committees. Two points may, however, be noted. The three advisory bodies which produced effective reports—that is to say the Bryce Conference, the Donoughmore and Haldane Committees—though not (with the possible exception of the last-named) possessing a wholly "expert" membership—did enjoy a strong infusion of "expert" members. On the other hand, the membership of the Conference on Devolution was not only "representative" but also by its very constitution precluded the appointment of experts, whilst that of the Royal Commission on Electoral Systems

was of deliberate intention neutral in character, the members being selected because they had at no time expressed any opinions on, or displayed any interest in, the subject under consideration. This experiment of a "neutral" advisory body was a failure.

### *The Terms of Reference and the Report*

If any advisory body is to prepare a valuable report, its terms of reference must be carefully and precisely drafted. The terms of reference of the Donoughmore Committee have been criticized on the ground that they embody the conclusions at which the Committee was expected to arrive, but the criticism in this instance is of minor importance since it is evident that the work was thereby in no way affected. But the same cannot be said of the Conference on Devolution. By its terms of reference the Conference was not required to pronounce *for or against the principle of devolution but to consider what, if devolution be accepted, was the most practical way of putting it into operation*. A large proportion of the persons appointed to serve on the Conference did not accept the principle; some indeed had actually opposed it in the House, and were consequently both unwilling and unfitted to discover the best means of putting it into operation. The resulting confusion might well have been avoided had the Government either drafted terms of reference acceptable to the members appointed or selected persons who agreed with the principle underlying the particular terms of reference.

The evidence submitted to these committees varied according to the type of body appointed and to the subject to be investigated. In general, it appears that the examination of witnesses, which takes an inordinate time, yields but meagre results. In this respect the Donoughmore Committee was to some extent exceptional only because in that instance there were lawyers to conduct the cross-examination of witnesses. The evidence heard by the Royal Commission on Electoral Systems certainly confirms the Webb's verdict that "of all recognized sources of information the 'evidence' given at these inquiries has proved to be the least profitable." \*

The majority of the Reports are too long. This applies with particular force to the Royal Commission on Electoral Systems, where an excessive quantity of detail is included in the Report itself. For this the "neutral" outlook of its members may be in part responsible, since it induced them to assemble material rather than to pronounce a

\* *Op. cit.*, p. 142.

verdict upon it. But it applies with almost equal force to other advisory bodies. The effect of the Reports upon public opinion is diminished by its presentation in a form too cumbersome to be easily digested.

### *Type of Advisory Body*

The constitution of the advisory bodies whose work has been considered in this study has varied. There have been a Royal Commission, two Departmental Committees of inquiry, and two Conferences. In the first two categories the constitution of the advisory bodies enabled the services of persons drawn from outside the Government machine to be utilized, whilst in the other category membership was confined to the two Houses of Parliament.

On the whole these differences in constitution have little material consequence so long as discretion is exercised in the selection of an advisory body suitably constituted for a particular investigation. The appointment of a conference, for example, to inquire into the problem of devolution was unfortunate in as much as its constitution automatically excluded from membership persons with expert knowledge of actual administrative problems. In general, however, the precise constitution of an advisory body is not of cardinal importance.

A more valuable definition of the type of an advisory body may be obtained by asking the question: Why was it appointed? Was it to investigate? Or to prepare for legislation? Or to shelve an inconvenient proposal? The answer to these questions defines the essential character of an advisory body. The Royal Commission on Electoral Reform Systems is an example of a body appointed to investigate, the Donoughmore Committee and the Bryce Conference of bodies appointed as a preliminary to legislation (which was not in the event enacted), whilst the Conference on Devolution was designed merely to shelve. It is to be noted that while the use of advisory bodies preparatory to legislation and for investigation has yielded somewhat disappointing results, the misuse of such bodies for shelving has been completely successful.

### *Conclusion*

The reports of the committees included in this survey are devoted without exception to advising upon matters of fundamental constitutional importance. They are exhaustive in character and their preparation has involved, not only hard work and considerable expense, but also the sacrifice of time by men not well able to spare it. Since the recommendations of no such committees have been

enacted in full, and of only one in part, the time, the labour, and the expense of preparing such reports may well seem difficult to justify. Sir Arthur Salter has said: "It ought to be regarded as a reproach—except in the event of decisive and unforeseeable later events—that a Government should have appointed a Commission consisting of persons chosen by itself, and entrusted with a task defined by itself, and should then come to the conclusion that either itself, or some other persons, were better qualified to decide on the same issue."<sup>1</sup> To appoint a Royal Commission only as a preliminary to legislation, as Sir Arthur advocates, would probably involve too sharp a break with tradition, especially since the adoption of such a practice would by implication discredit the committee of investigation which has its own and proper uses. But, whatever view be taken of this particular proposal for reform, it is clear that the present practice is indefensible. The fate that has overtaken the work of advisory bodies on constitutional reform accounts for the indifference with which even the most significant of such reports are treated, not merely by the public, but by Parliament itself.

<sup>1</sup> *Op. cit.*, p. 55



*Part Three*

THE HOUSE OF LORDS

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"That gilded ruin of the great council chamber of Parliament which we call the House of Lords"

A. F. POLLARD in *The Evolution of Parliament*.

*The House of Lords and Legislation\**

## A HISTORICAL SURVEY

"Whatever is unnecessary in government is pernicious. Human life makes so much complexity necessary that an artificial addition is sure to do harm; you cannot tell where the needless bit of machinery will catch and clog the hundred needful wheels; but the chances are conclusive that it will impede them somewhere, so nice are they and so delicate."

WALTER BAGGOT: *The English Constitution*.

THERE is an idea abroad, in circles where liberal opinions prevail that the House of Lords is a harmless, if not definitely useful, piece of constitutional machinery: that it was rendered innocuous once and for all by the Parliament Act of 1911. This is a wholly mistaken idea, as a survey of its attitude to legislation will show. It has been, for the last hundred years, a record of legislative obstruction; but obstruction not always either consistent or at a uniform rate. A study of its record reveals that the House of Lords, by its very nature, has placed great obstacles in the way of the legislative programmes of those Governments only that were liberal or non-conservative; that it has frequently accepted legislation from Conservative Governments, which it had rejected from Liberals; that instead of being an independent House, it acts as one wing of the Conservative Party—looking after the interests of Conservatism when out of power, as one of its members put it; and that in the course of years, it has worked out an effective technique of legislative obstruction, by which it has been able always to delay and often to destroy the legislation of Governments it did not like, wearing them down by a process of attrition, so that they lost their popularity and were replaced at the polls by Governments it did like, when it could relapse once more into a state of dignified and secure quiescence.

\*The *Political Quarterly*, vol. iv, 1933. Reprinted by kind permission of the author and the publishers.

But in the process of obstruction, it has once or twice very nearly run the country to the verge of revolution. Over the Reform Bill of 1832, it drew back, thanks to the Crown and the Duke of Wellington, just in time. In the case of Ireland, it did not draw back in time; and the solution of the Irish question was, in the end, found in revolution. The Lords above all were responsible; if they had not again and again rejected the moderate proposals for Home Rule, put forward in 1886, in 1893 and in 1912, there would have been no brutal civil war in Ireland with its legacy of distrust and hatred, and there would probably have been no mandate in Ireland for a Republic and separation from the Commonwealth. But no; hundreds of lives had to be sacrificed, civil war inflicted upon the country, before the plain will of the Irish people was allowed, by the Lords, to prevail. It is a terrible responsibility.

Throughout this period, it has been, like all politics, a fight for the power of a class. Up to the time of the Reform Bill, and as long as the membership of the Commons remained largely under the control of the House of Lords, it did not need to develop a technique of obstruction. It could even consent to some of its powers passing to the Commons, as long as one half of the Commons owed their seats to the Lords' patronage. But the moment there was a question of that control being lost, and reforming majorities were returned to the Commons, the old corrupt harmony broke up and conflicts between the two Houses were intensified. We do not need to go into the prolonged constitutional crisis over the Reform Bill; it was already clear that "a House which showed itself more reactionary than the unreformed House of Commons, a House which could defend the existing penal code, oppose reforms in the lunacy laws, and refuse protection to factory children and 'climbing boys,' was not likely to yield readily to a reform of the Lower House which would increase the chances of such obnoxious legislation."<sup>1</sup> Already before this, by their prolonged opposition to Catholic Emancipation, the Lords had prejudiced the whole chances of the Union with Ireland.

It has been in relation to Ireland that the influence of the Lords has been most fatal. In the years after the Reform Bill, their rejection of the Irish Tithes Bill and their enactment of a drastic Coercion Act, led O'Connell to agitate for the repeal of the Union; just as their denial of reasonable reform later led to Parnell and the Land League, and their refusal of Home Rule under Redmond to the victory of Sinn Féin. In 1836, the Municipal Corporations (Ireland) Bill was

<sup>1</sup> Emily Allyn: *Lords versus Commons*, p. 12.

turned inside out to suit Tory ends, to make, as the candid Lord Lyndhurst avowed, "a conservative arrangement." The English Corporation Amendment Bill had to be dropped because the Lords' amendments destroyed its purpose; and the Irish Tithes Bill was a third time rejected.

This mutilation of the Reform Government's legislation led Radicals like Hume and Grote to attack the House of Lords itself as an institution—an attack which the Whigs under Melbourne were by no means anxious to follow up. As a consequence, the Lords achieved what in 1832 they could hardly have hoped for: they broke the initiative of the Reform Government and led to its defeat. The importance of these years lies in the fact that it was then that the Lords developed the technique, which they have since carried to so fine a point, of allowing a reforming Government to carry some of its earlier measures, while it is still strong in the popular will, and then to dog its steps as it loses its earlier popularity, destroying its programme piece-meal and ultimately bringing about its downfall.

In this way, the Lords, having been forced to accept the Reform Bill and the reform of the Municipal Corporations, now set themselves to obstruct and nullify the enfeebled Whig administration in its later measures. Greville, watching the insidious process, thought it "a great practical change in the constitutional functions of the House of Lords," and "a departure from the character and proper province of that House, to array itself in permanent and often bitter hostility to the Government, and to persist in continually rejecting measures recommended by the Crown and passed by the Commons."

But there were certain subjects for which the Lords had a peculiar repulsion and on which they were for long adamant; one was the admission of Jews to Parliament and the other the admission of Dissenters to the Universities. Upon the Repeal of the Test Act in 1828, they had secured the exclusion of the Jews by inserting into the oath the words "upon the true faith of a Christian" as a condition of their consent to repeal. Between then and 1858, some eight or nine Bills to admit Jews were passed by the Commons and rejected by the Lords; the Bishops, then a most reactionary regiment, always voting in the majority. Towards the end, the irony of the situation was that the Tories were by this time dependent on the brains of Disraeli for the leadership of their party; and in 1866, the Jews were admitted on a side-wind, through an Act primarily intended for Catholics. The poor Dissenters had to wait considerably longer.<sup>2</sup>

<sup>2</sup> Cf. H. A. L. Fisher's *Lord Bryce* for the inconvenience Dissenters experienced in entering the Universities.

Meanwhile the Lords had a better record with regard to factory legislation—for the reason that they had no personal interest in the factories, and were even glad to see restrictions placed upon their enemies, the manufacturers. After 1818, when they rejected a Bill limiting children's work to eleven hours a day, they passed all factory measures sent up to them. But when it came to mines, in which they were interested, they were all up in arms. Lord Ashley, who owned no mines, had introduced in the Commons, the Mines Act of 1842, regulating hours and conditions of work. The evidence revealed by the Royal Commission was so startling that not even the coal-owners in the Commons could stop its passing unaltered. Not so in the Lords. Led by Lord Londonderry, they amended the Bill so as to admit boys at ten instead of thirteen years, removed the restriction on their hours of work, and the security against the employment of women; and struck out the provisions for inspection. "Never have I seen," said Ashley, "such a display of selfishness, frigidity to every human sentiment, such ready and happy self-delusion." Experience showed how necessary the provisions for inspection were to the operation of the Act; but the Union's attempt to get an amending Act was resisted by Lords Londonderry and Lonsdale; while Disraeli, the author of *Sybil*, protesting in the Commons that the Act would be "seriously injurious" to coal-owners, had to be reminded of the 2,000 lives lost each year in the mines.

In the Repeal of the Corn Laws, the Lords had a heavy reverse for themselves as landowners; but by their obstinacy, they brought about an even worse fate for the Conservative Party. The failure of Lord John Russell to form a Whig Government which might carry repeal was partly due to the doubt whether they would allow him to carry it. So Peel was handed back the poisoned chalice and the Tory Party was split. The Crown and Wellington together brought pressure to bear on the Peers; they based their attitude on the view, in the words of the Prince Consort, that "it is a matter of the utmost importance not to place the House of Lords into direct antagonism with the Commons and with the masses of the people."

When Gladstone, with his reforming zeal, became the chief power on financial questions in the Commons, the Lords under Derby prepared themselves to assert a co-ordinate authority with the Commons on financial as on other branches of legislation. They saw their

<sup>2</sup> For Wellington's point of view, cf. his famous letter to Lord Derby, quoted in Bagehot, *The English Constitution*.

opportunity in his repeal of the Paper duties. These were the last of the "taxes on knowledge"; and it might be expected that the Lords would oppose. They did, and successfully; with all the more alacrity since it held up Gladstone's programme of substituting direct for indirect taxation, which increased the share of the burden borne by the landlords. Lord Granville appealed to them "not to furnish food for declamation to those who seek to injure this branch of the legislature"—almost the only argument they have been willing to listen to when faced with progressive legislation. But in vain; the proposal was defeated. Next year, Gladstone incorporated the remission of this duty along with all other financial proposals in a single Finance Bill, a procedure which has since become the rule. The Lords were infuriated, but did not dare to reject a whole Budget, until some fifty years later, when they rejected the Budget of 1909. Speakers in the Lords displayed a remarkable anxiety that the taxes on tea should be lowered as being a greater boon to the working-classes than cheaper newspapers; had it been the penny newspapers of today, it might have been true—but it was liberal or radical newspapers that they wanted to prevent.

Meanwhile, much of the growing embitterment in the relations between England and Ireland was directly the work of the Lords. Their resistance over decades, in the interest of those peers who were also Irish landlords, to compensation to tenants for unexhausted improvements, heightened agrarian discontent and increased distress. Bills to provide for compensation to Irish tenants were introduced in 1842 and again in 1845; in 1846 three more were brought forward, and another in 1848. But nothing that helped the tenant against the landlord was allowed to get through; and in 1850, the Lords passed a bill to simplify the processes of ejectment and distress. The Bill, which passed the House without even discussion, was characterized by Mr. Shannon Crawford, himself an Irish landlord who wanted justice for the tenantry, as a bill "to facilitate extermination." A serious attempt on the part of Government to provide a remedy, the Tenants' Compensation Bill of 1854, was dropped because of opposition in the Lords; at its rejection, it was declared that only twenty-five peers were present, twelve of whom were Irish landlords. The process of eviction and emigration continued; some two millions left Ireland from the forties to the sixties, and another million between 1860-70. It swelled the numbers of those inveterately hostile to England beyond the seas; it raised the Irish question in a new form after 1866, when Parliament

ielded to Fenian outrages what it had denied to the legitimate demands of the Irish members; the children of these emigrants saw through Sinn Féin to victory in the end.<sup>4</sup>

After the Reform Bill of 1867, and the enfranchisement of the lower middle classes, the obstruction of the Lords settled down to its regular stride. As long as Palmerston lived, there was a virtual coalition of Whigs and Tories to postpone radical reform. But from Gladstone's first government of 1868-74, there starts the regular rhythm of the Lords' activity in the modern period: a vigilant and destructive opposition to the programmes of all Liberal Governments, alternating with complete acquiescence and submission whenever the Conservative Party was in power. In this way, the years of Liberal Government 1868-74, 1880-6, 1892-5, 1906-14, were years of constant conflict with the Lords, when the Government had enormous difficulties in bringing its programme through; while for the rest of the time there was no opposition from the Lords whatever. No Conservative measure of importance was lost through their opposition. But to imagine that their claim of checking "the inconsiderate, rash, hasty, and undigested legislation of the other House"—in the egregious Lyndhurst's phrase—was substantiated, is a great mistake. All the ill-considered and unsuccessful legislation that came up from the Lower House, like the Encumbered Estates Act of 1848, the foolish Ecclesiastical Titles Act of 1851 and the ritualistic legislation of the 70's, had no difficulty in passing through the Lords. It was liberal measures of relief that met with determined obstruction, such as the numerous attempts made to abolish Church rates, which weighed unfairly upon Dissenters. Bills were brought in for their abolition in 1858, 1860, 1866, and 1867, in each case passing the Commons and being rejected in the Lords. It was not until the Conservative Government of 1868 that they accepted compromise on the matter; and only then, as they made it plain, from motives of expediency, not because they really agreed.

During Gladstone's ministry, Disraeli used the Lords systematically as part of the Conservative opposition, as Peel and Derby had done before him, and as Salisbury and Balfour after him were to do. Its first great measure, the Disestablishment of the Irish Church, having been carried by large majorities in the Commons, was allowed a second reading in the Lords; partly because the Liberal Government had all the popularity of having only just come in, and partly since they were reserving themselves to refashion the measure in Committee.

<sup>4</sup> Cf. Sean O'Faolain: *The Life of Eamon de Valera*.

Among the numerous amendments made, was one providing the terms of compensation to be the payment to the future Church-body of a capital sum equal to 14 times the aggregate amount of the existing yearly incomes and yearly life interests. The Earl of Kimberley pointed out that this "would exceed what the Church was in fact entitled to, and would be to confer a bonus on it." A main part of the Disendowment proposals concerned the disposal of the surplus income of the Church; Gladstone had intended it to go in relief of rates, for the upkeep of hospitals, and infirmaries and for other beneficent purposes. The Lords passed an amendment leaving this matter to the future consideration of Parliament, so destroying what had been meant for a message of conciliation to Ireland. Other amendments were to hand over the Royal as well as the private grants of property to the newly constituted Church; and the Archbishop of Canterbury succeeded in inserting a compensation of 500,000 pounds in lieu of its private endowments. There was a violent agitation in the Commons against the mutilation of the Bill; and there were all the circumstances for a dissolution. But Gladstone was anxious to go forward with his programme and very largely gave way. It was in vain that Lord Granville said that the country had voted as much for disendowment as for disestablishment. In the result, of a total property of 15 million pounds, the Commons had restored 10 million pounds to the disestablished Church, and the Lords had added 4 million pounds. Disendowment was a farce; the Irish Church, for the Church of an inconsiderable minority, emerged the best endowed in the world, while the Government lost favour both with its Presbyterian and Catholic supporters in Ireland for having given way.

In the next year, the University Tests Bill, opening the Universities of Oxford and Cambridge to Dissenters, passed the Commons by large majorities. It was rejected in the Lords through the influence of Salisbury, and on the motion of Lord Carnarvon who expressed himself as being "apprehensive that if tests were all abolished there would be no adequate security for the moral and religious character of collegiate education." Next year the Bill was presented to them again, and was passed, probably by Disraeli's influence. The Ballot Bill had to be presented to them three times, in 1870, 1871 and 1872, before it became law. The Duke of Richmond had inserted a clause making the ballot optional—the effect of which was cynically obvious; since those voters who demanded a ballot could be presumed to be voting against the wishes of their squire. Lord Shaftesbury was "prepared



to witness the dissolution of the established Church and a vital attack upon the House of Lords; he was prepared even to tremble for the monarchy. But he was not prepared for an immoral people, fearing to come to the light because their deeds were evil." On second reading, the Duke of Richmond completely changed the purpose of the Bill by making it a measure to compel all persons to vote openly; and an amendment was carried to keep the public-houses open on election-day as usual. There was an acute conflict with the Commons; but the Lords, fearing to force a dissolution, threw over the extremist leadership of Lord Salisbury and gave way. But the Government meanwhile, had lost invaluable time for its programme of social reform by having to pass the University Tests Bill twice and the Ballot Bill three times. Similarly the very necessary reforms in the Army, which depended on the abolition of the system of purchasing commissions, a system which had revealed its inefficiency in the Crimean War, were blocked by the House of Lords. Gladstone thereupon advised the Queen to abolish the purchase system by Royal Warrant, a bold procedure which entirely justified itself. A vote of censure was tabled in the Lords by the Duke of Richmond, though the vote was deferred until after the Goodwood races, when it was carried by 244 to 80.

More important in its consequences was their obstruction of all liberal land legislation. The Irish Land Bill of 1870 was designed in some part to meet the grievances of Irish tenants, by establishing the Ulster tenant-right as a legal and binding contract, and by providing compensation to tenants for their improvements. Lord Derby inveighed against "that curious and fantastic delusion which appears to have taken hold of some of the agricultural body in Ireland, that in some vague unexplained way, the land belongs of right, or ought to belong to those who live on it"; and a series of amendments was carried which "struck at the root of the Bill." As a consequence, when famine came upon Ireland in 1879-80, the landlords were enabled, through the Lords' amendments, to evict tenants without compensation. The number of evictions rose from an average of 503 for the five years ending 1877, to 1,908 in 1879, and 1,073 for the first half of 1880.

By the year 1880, after six years of Conservative Government, during which there was little or no opposition to government measures on the part of the Lords,<sup>5</sup> Gladstone was once more in office. Many days of

<sup>5</sup> Except regarding measures affecting the land. In 1874 they rejected a Bill giving labourers the right to rent charitable lands in allotments; in 1876 they struck out of the Commons and Enclosures Bill the clauses providing for allot-

Parliamentary time were spent on the Compensation for Disturbance Bill, which was a relief measure of a temporary character, to meet distress in Ireland. It was rejected in the Lords after two days by 282 to 51, in a House filled with Irish landowners, their relatives and friends. This was followed by the outbreak of the Land League agitation, by boycotting and murders in Ireland. The Government was forced to respond with Coercion Acts—these had no difficulty in the Lords. Then came Gladstone's great constructive measure, the Irish Land Bill of 1881, which attempted a solution of the conflict between landlords and tenants, by setting up Courts to which the tenants might appeal against threatened eviction, and to fix rents; and by forming a Land Commission, which might buy and sell land freely, with the aim of setting up a peasant proprietary. The Dukes of Argyll and Bedford resigned from the Government, rather than support it; and the Lords passed a number of amendments, "all of which had for their object to free the landlord from the tenant's ascendancy, or to place the tenants under the landlord's control." \* The Commons spent more time on the Lords' amendments than the Lords had in forming them; there was an agitated feeling abroad in the country, and the threat of the revival of the Land League's activity. The Government made important concessions and so secured what remained of their measure. But so rendered inadequate, it brought no solution in Ireland. In the next year, Gladstone brought in an Arrears Bill to devote certain surpluses on Irish Church Funds and a grant from the Exchequer to meet some part of the arrears which were a chronic cause of unrest between tenant and landlord. Again Salisbury carried an amendment destroying its principle, by giving the landlord the option of refusing to compound for arrears of rent due. With great conciliatoriness, Gladstone accepted some of the amendments; and on the others, the Lords threw over Salisbury and the Bill went through. It was noteworthy that on practically every point where the great measure of 1881 fell short, as the result of the Lords' amendments, the decision was reversed by subsequent legislation of Conservative governments and approved by the Lords.<sup>†</sup>

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ments and recreation grounds; while in the Agricultural Holdings Bill of 1875, the obligation to pay compensation to tenants for unexhausted improvements was made permissive only. Cf., Allyn, *op. cit.*

\* Annual Register, 1881.

† Cf., Allyn, *op. cit.*, p. 111. In 1887 leaseholders, who had been excluded, were admitted to the full benefit of the Act. In 1885, the full purchase price was advanced; while subsequent Acts of 1891, 1896, and 1903 went beyond what Farnell had asked in 1881.

Over the Franchise Bill of 1884 there was a prolonged conflict, since the Conservatives in the Commons, for tactical reasons, did not dare openly to oppose its extension of the suffrage; and the main work of opposition was left to the Lords. In the course of the struggle, Gladstone was moved to protest at the "entire novelty of the assertion that the Lords who had no constituents, had a right to compel an appeal to the country whenever they chose to imagine that the country had changed its mind and wished to return a different House of Commons." The Lords, however, insisted upon an agreed Redistribution Bill, before they allowed the Franchise Bill to become law.

From 1886 to 1892, under the Salisbury Government, the House of Lords lapsed once more into a state of relieved acquiescence; but with the return of the Liberals in 1892, they sprang at once into action. Gladstone's second Home Rule Bill which had passed the Commons, was rejected in the Lords by 419 to 41, the largest majority ever recorded in that House. And they went on to mutilate the rest of the Liberal programme. There was the Employers' Liability Bill, which abolished the doctrine of common employment, much used by the worst employers to the disadvantage of men injured in their service. The Lords insisted on maintaining the principle of contracting out, which by giving workmen the power of coming to a special arrangement with their employer, virtually put them at his mercy. The Commons disagreed with the Lords' amendments, but Lord Salisbury insisted upon them in the name of "the freedom of contract which working-men now enjoyed as Englishmen"; and the Government dropped the Bill. The trade unions, which had kept remarkably quiet during the controversy, replied with a demonstration against "a body of irresponsible legislators, which could make a mockery of the most extended suffrage." The very important Local Government Bill, setting up parish and district councils, was similarly mauled. The Lords took a special objection to giving the councils power to hire or purchase land; they tried to confine the vote to those only who paid rates, and to retain plural voting. The Government was forced to accept the Lords' position on the hiring and purchase of land, and certain other amendments. In his speech announcing their acceptance to save the rest of the measure—in what was in fact a farewell message to the Commons, Gladstone pointed to a day when they would have to settle accounts once and for all with the Lords, and urged the Liberals to go forward to an issue. The old man with his marvellous sense of political tactics was undoubtedly right. If they had gone

forward to an election, united under his leadership, they would not have had the electoral debacle of 1895; there would not have been ten years of a sordid and adventurous Imperialism in power; there might never have been the Boer War.

The defeat of the Liberal Government of 1895 lost many measures of reform which had been promised in the Newcastle programme, such as Welsh Disestablishment, the abolition of truck and the payment of election expenses. But it was not until the return of the Liberals to power in 1906 that the culmination of the Lords' obstruction was reached. It is not too much to say that the legislative programme of that Government was mangled. The tactics of the opposition were foreshadowed immediately after the Liberal triumph at the polls, by Lansdowne's letter urging close collaboration between the two opposition benches, and by Balfour's boast that "the great Unionist Party should still control, whether in power or whether in opposition, the destinies of this great Empire." The Education Bill of 1906 which was the boldest and most statesmanlike attempt that has been yet made, to construct a uniform order out of the patchwork of our educational system, with its numerous voluntary schools, its dual control and varying standards, was transformed out of recognition in the Lords. The result of their amendments was to make denominational religious teaching the normal arrangement, instead of the exception; it went back on the freedom of the teacher from religious tests, which the Bill had secured, and reinstated the dual system of voluntary and State schools. The Commons rejected all their amendments by a 300 majority; the Lords insisted. They were prepared to force an election so early, for they were convinced that the issue of Church v. Chapel was a favourable one for the Conservative Party to pick itself up on. The Trades Disputes Bill was allowed to pass, with an amendment to exclude agrarian disputes from its scope, because, as Lord Lansdowne candidly observed, "In this case I believe the ground would be unfavourable to this House."<sup>1</sup>

Next, the Plural Voting Bill was rejected. The Government had proposed to restrict the plural voter to exercising only one of his alternative votes; this the Lords felt strongly about: it was an advantage to property obviously worth fighting for. Then came a brush between the small Labour Party and the Lords, over the Aliens' Bill which had forbidden the importation of aliens to take the place of workmen during a trade dispute: also rejected. In the Education

<sup>1</sup> V. Lord Newton's *Lord Lansdowne*, p. 359.

(Provision of Meals) Bill, the Lords took Scotland out of the operation of the Act, against the vote of the Commons. In 1907, the Evicted Tenants Bill was eviscerated by the Lords; it was intended to give some increased security to tenants of those landlords like Lord Clanricarde on whose estates numerous evictions were proceeding. But when it emerged with its powers for compulsory purchase restricted, the number of tenants to whom it was to apply limited and its duration confined to three years, Redmond repudiated the Bill as having no use now to Ireland. The Lords, however, continued; the Land Values (Scotland) Bill was rejected, since in their view it might "form the basis for predatory schemes." The Small Landholders (Scotland) Bill was dropped because of their amendments.

In 1908, the great Licensing Bill was rejected, after six full weeks of Parliamentary time had been spent on it. It was a *comprehensive* code of licensing reform; it provided for an effective rate of extinguishing redundant licences. Strong pressure was brought to bear by the brewing interests at the annual Conservative Conference, where it was threatened that if the Unionist leader in the Lords let the Bill through, though some of the best of them were in favour of it, like Lord Milner ("I believe that on the whole it will make for temperance"), the interest would never vote Conservative again. The Bill was rejected on second reading in the Lords, by a very large majority (272 to 96), numbers of habitual absentees having come up to the defence of "the Trade."

In 1909, the Housing and Town Planning Bill was much damaged by the Lords' Amendments substituting a costlier scheme of land purchase for the benefit of landlords, permitting back to back houses, exempting railway and statutory authorities from compulsory purchase and so on. The Irish Land Bill was changed in the direction of protecting the landlord; the consent of the owner to dealing with congested areas was to be obtained, and compulsory purchase was abolished for estates outside congested districts. The Housing and Rating (Scotland) Bill was so restricted by the Lords as to be of no worth; the London Elections Bill, an attempt to abolish plural voting which in London gave the Unionists a perpetual majority, was rejected outright. Then came the *coup de theatre* of the Lords, when they rejected Mr. Lloyd George's Budget by the enormous vote of 350 to 75; and in the last days of the session, compromises were reached on some of the previous Bills, the Government accepting restriction

of land purchase against the will of the Nationalists in the case of the Irish Land Bill, and certain modifications in the Housing and Town Planning Bill for the sake of saving something from the wreck.

The rejection of the Finance Bill of 1909 meant the revival of the claim to reject finance measures, which had lain disused for fifty years. The Lords were the Constitutional innovators. No fewer than seven important measures of the Liberal Government had been lost in the House of Lords: the cup had been more than filled. The elections of 1910 were fought on the ground of their claim to co-ordinate authority and so to dictate to governments they disapproved of, what their legislation should or should not be. After their defeat, it was to be expected that they should be shorn of their power to reject or hold up the financial measures of the Government, and their veto on other legislation confined to a suspensory power. The Parliament Act of 1911 did little more than fix statutorily what had been the constitutional usage before the Lords embarked on their reckless campaign in 1906. Indeed, "the thing that most strikes an outsider in reviewing the long struggle is the conservative character of the settlement effected."<sup>1</sup>

Nevertheless, the campaign went on. In 1912, the Lords weakened the Temperance (Scotland) Bill and insisted on the punishment of flogging, against the wish of the Commons and the Government, for first offenders under certain sections of the Criminal Law Amendment Act. In 1913, the Home Rule Bill, in spite of its moderation and having been amended in order to maintain the supremacy of the Imperial Parliament, was rejected by them by 326 to 29; the Welsh Church Disestablishment Bill by 252 to 51. These two measures had formed the main legislative programme of the Government. Hardly anyone would deny that Welsh Disestablishment, since it has come into being, has been a success, while the postponement of Home Rule was a great disaster, for which the Lords and the Conservative Party must be held responsible. It gave two years in which the sabotage of the Constitution was openly prepared, along with military resistance in Ulster, and it has prejudiced the whole development of Anglo-Irish relations. If Home Rule had been allowed to come into being, it would have given Ireland time to settle into managing her own affairs before the outbreak of the war, and we should have had her whole-hearted collaboration during the War instead of weakening us by having partly to be held down. In July 1913, the Lords rejected the Amended Home

<sup>1</sup> Allyn, *op cit.*, p. 214.

Rule Bill on second reading; and this was followed by the organizing of armed resistance to the Crown under Conservative leadership in Ulster and the promise by certain Unionist peers of aid from Great Britain. In July 1914, the Government bowed to this threat, and excluded Ulster from the Bill; restricted very considerably the legislative powers under Home Rule, reserving a number of subjects, and maintaining the appeal from the Irish Courts to the House of Lords: the Irish legislature was to have less powers even than in 1782.

During the War and the Coalition, and for the long dominance of Conservatism after the War, the House of Lords remained inactive, quiescent. But with the advent of a Labour Government in 1929 it awoke to a new, long-dormant sense of importance. It first showed its ill-will by carrying a motion against the resumption of diplomatic relations with Russia; later its anti-Soviet campaign reached a climax with Lord Birkenhead's speech, expressive of his well-known anxiety for the welfare of religion. Next year, it grew bolder. It sent back the new, more generous Unemployment Insurance Bill with two significant changes; setting a time-limit of one year to its operation, and adopting a more stringent text of disqualification for benefit. Both changes were rejected by the Commons; but in the end, they had to give way on the first, greatly to the indignation of the Labour members. Important changes also were made in the Coal Mines Bill: its amendment to invest the power of compelling amalgamation in the Board of Trade, not in a special commission, was described by Sir Tudor Walters, himself a coalowner, as motivated by a desire to delay the carrying out of amalgamations, and to make ineffective amalgamations instead of effective ones. It inserted the 90-hour a fortnight spread-over, and voted down the district levy, since, as the Liberals in the Commons had voted against it, it seemed safe to delete this also. Then came the expiry of the Dye Stuffs Act, where the Lords saw their opportunity, and after a speech by Lord Melchett of Imperial Chemicals, forced its continuance in spite of the Government and the vote of the Commons.

In 1931, as the Government was waning in popularity, it rejected the education Bill, a measure of first-class importance, by the large majority of 168 to 22. There was a good attendance to ensure the defeat of a measure which would have been an important step in educational progress; the Archbishop of York's plea that they should at least show they were in favour of the principle of raising the school-

leaving age, aroused no response. Next, the Land Utilisation Bill was mutilated by the removal of the first clause, which empowered the Ministry of Agriculture to acquire land for reconditioning. The Government sacrificed the proposed Land Corporation and the clause empowering the minister to acquire land, in order to save something of the Bill. Nothing however remained of the Electoral Reform Bill after the Lords had finished with it; by it, plural voting had been abolished; the Lords restored it and removed the restrictions on the use of motor-cars at elections. That was the second time in one session, that the Upper House had deliberately challenged the Government; it was a symptom that the Government's hold was failing and that it could be obstructed relentlessly and with impunity. But in the end, an even more elegant way of bringing it down was found, when the governing class itself took over the leaders of the Labour Party.

Since then, secure enough, it has not needed to take a prominent part in legislation. Last year it spent many days remodelling the Children and Young Persons Bill according to its own ideas, inserting, against the vote of the Commons and the wishes of the Home Office, a provision for the whipping of children for certain offences. Among several interesting speeches in its support, Lord Danesfort said: "I do think that this effeminate, over-humanitarian, ultra-sentimental view that to correct a child by reasonable correction is something which is out of date, which is wrong and which offends the minds of proper thinking people, is a view which we cannot and ought not to adopt."

Joseph Chamberlain once declared: "The chronicles of the House of Lords are one long record of concessions delayed until they have lost their grace, of rights denied until extorted from their fears. It has been a history of one long contest between the representatives of Privilege and the representatives of popular rights, and during this time the Lords have prevented, delayed and denied justice until at last they gave grudgingly and churlishly what they could no longer withhold. We are told that the object of the second chamber is to stay the gusts of popular agitation and to give the nation time for reflection. I defy any student of history to point to one single case in which the House of Lords has ever stayed the gust of public passion, or checked a foolishly popular impulse. They have given us time for reflection often enough, and the only result of that reflection has been to excite feelings of regret and indignation at the waste of



time, and at the obstacles which have been unnecessarily interposed between the nation and some useful public reform."

It is a case in which the impartial student of history cannot but agree with the partisan statesman.

# XI

H. H. ASQUITH

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## *Speech on the Parliament Bill, February 21, 1911\**

THE PRIME MINISTER (Mr. Asquith) asked for leave to introduce a Bill "to make provision with respect to the powers of the House of Lords in relation to those of the House of Commons and to limit the duration of Parliament."

In making the Motion which stands in my name on the Paper, I am afraid that I must of necessity traverse a certain amount of very familiar ground. The situation is, indeed, in some respects, almost without precedent in our Parliamentary annals. The Bill which I am about to ask leave to introduce is identical in every respect with that which was read a first time by the last House of Commons in April, 1910. Since then, Sir, that Bill has been submitted definitely and specifically to the electorate of the country, with the result that they have returned to this House a majority in its favour in the United Kingdom of, I suppose, something like 120, and in Great Britain of not less than sixty. If ever there was a case, therefore, this may fairly be said to be a case when a Minister may be excused, without any disparagement of the importance or gravity of the subject matter if he make only a brief and summary presentation of his proposals. I am more disposed to adopt that course, because as lately as 29th March last year, I entered at this Table, and at very considerable length, upon the causes, historical and other, which had brought into existence—and during these last fifteen months into acute urgency—what we call the constitutional question. I pointed out then, and I repeat now, that under an unwritten Constitution such as ours—which has developed not so much by statute as by usage—there must, in time, be a growing divergence between legal powers and constitutional practice. A familiar illustration—perhaps the most familiar—is that

\*Parliamentary Debates, House of Commons, Fifth Series, Vol. 21, pp. 1742-52. By kind permission of His Majesty's Stationery Office.

of the Veto of the Crown. No Bill can now, any more than in the days of Queen Elizabeth, become an Act of Parliament and acquire the force of law unless it has received the express Assent of the Crown. Yet, whereas, as we know, Queen Elizabeth sometimes refused her Assent to half of the proposed legislation of the Session, no English Sovereign has attempted to exercise the Veto since the days of Queen Anne. No Minister would advise it. Its revival is an imaginary danger. This is a point on which, by universal consent, there is no necessity to bring the letter of the law into harmony with what has become the unbroken and inveterate usage. But there is, and has been for more than two centuries, a similar divergence developing more slowly, but not less clearly, between the legal powers of the two Houses of Parliament in regard to finance and their actual constitutional exercise. I need not go into past history. It is sufficient to say that until the year 1909 the House of Lords had for fifty years not attempted to interfere in any way with the financial provision of the year. It was a sudden assertion as a living and active power of a legal right that had passed into practical desuetude that was the immediate occasion of the acute stage into which the constitutional question has now passed. Further, Mr. Speaker, in regard to their right of control over policy, over administration and over legislation, the legal relation of the two Houses, which have theoretically co-ordinate and co-equal powers, ceased to bear any resemblance to the actual fact. The House of Lords has long since ceased to have any real control over policy or administration. They debate such matters, and we read their Debates with interest and with profit, but their decisions are academic conclusions and have no direct influence, and can have no direct influence, on the fortunes of the Government of the day. (AN HON. MEMBER: "No.") I thought I heard a faint note of dissent from the Benches opposite. Does the hon. Gentleman who uttered that note of dissent imagine that the House of Lords could turn out the Government by passing a direct Vote of Censure? And why can they not? The reason is a very simple one. It is because the concentration of financial power and of the granting of Supply in the hands of the Commons leaves the Lords without any available instrument for making their condemnation effective. If the precedent of 1909 had been allowed to stand there would, in this respect also, have been a revolution in constitutional practice. If that precedent had been allowed to stand unquestioned the Lords could always, as they did then, by destroying the finance of the year, compel the Government of the day either to

resign office or to appeal by dissolution to the electorate. That power, certainly for two generations, the Lords have never exercised; or even claimed the power of saying by whose hands and upon what lines the general administration of the country should be conducted. Let me pass from that. There is no dispute about the propositions I have enunciated so far from anybody who understands the practice of our Constitution. Let me pass from that to the domain of legislation. Even there the legal theory of a co-ordinate authority between the two Houses has for a long time past been tacitly, if not explicitly, abandoned. It is admitted that the House of Lords must at some undefined time yield to the will of the electorate. Till, I think, in January, 1910, it was widely contended—we do not hear that contention put forward to-day—that the present House of Lords were by instinctive divination or by acquired tact possessed of, and exhibited, exactly those special faculties by which an ideal Second Chamber under a democratic system of Government would secure that the decisions of the elected representatives of the people should never transcend, should never fall short of, but should always be brought into conformity with the deliberate will of the electorate who sent them here. What was and what is the Second Chamber in regard to which I said only a year ago this felicitous, this almost miraculous adaptation of means to ends was confidently asserted? It is an Assembly admittedly which is neither elected by the people nor dissoluble by the Crown. It consists of about 600 Members—and if we deem for the purpose as ostensibly non-partisan the occupants of the Episcopal Bench—it is no exaggeration to say that of the remainder, some 570 or 580, normally 500 at least belong to the Conservative or Unionist party. That is the body, hereditary in origin except so far as its composition is tempered by the sporadic action of the Minister of the day, irresponsible in the exercise of its powers, overwhelmingly partisan in its actual composition—that is the body to which the letter of the law entrusts the right to revise and delay, and, if it will, reject the considered and deliberate decision of the representatives of the people. People talk of the policy and even the necessity in the interests of democracy itself of what is called the bi-cameral Constitution. Could the most ingenious and malignant adversary of the system have devised a better *reductio ad absurdum* of the principle of the Second Chamber? On paper, as everyone now admits, it is an indefensible paradox, which could only be reconciled with the actual working of Democratic Government by an almost supernatural endowment of insight

and self-abnegation. No country, no democratic country, and least of all our own, can safely rest its fortunes on the hazard of a perpetual recurrence of special providences. There have been in history benevolent autocrats, there have been in history disinterested and far-sighted oligarchies, but, as has been wisely said, I forget by whom,

"The chapter of accidents is the Bible of Fools."

And so we have found it. For what in practice—I am repeating a familiar question, but one to which no adequate answer has yet been given—is our so-called Two-Chamber system? We who support the policy of the Bill that I am going to ask the House to read a first time, are constantly reproached with the intention of substituting for legislation by two chambers the uncontrolled domination of one. Yes, but what are the facts? I will only go back for fifteen years. I might carry the retrospect a great deal further if time and opportunity allowed. Take the ten years, 1895 to 1905. The constitutional question, as we now know it, was then dormant. Why was it dormant? Because we lived under the unchecked rule of a single chamber. There followed the four years, 1906-1909. I am stating what is now one of the commonplaces, and the admitted commonplaces, of political controversy when I say that during those years, with the exception of a few instances when in Lord Lansdowne's felicitous and memorable phrase the conflict would not have been on favourable ground to the Second Chamber, the House of Lords resolutely opposed, and successfully defeated, the principal controversial measures passed by the largest majorities in the whole annals of the House of Commons. The climax was reached in the autumn of 1909, when the House of Lords rejected the finance of the year. Although I am loath to assume even for a moment the mantle of a political prophet; I do not think it is a very rash prediction that the judgment of history will corroborate the coolest-headed contemporary observers that the rejection of the Budget by the House of Lords in 1909 was the most stupendous act of political blindness that has been perpetrated. I do not think I am exaggerating in the least when I say that, on that fatal day, fatal to the House of Lords, not to anybody else, of the 30th November, 1909, the House of Lords as we have known it, as our fathers and our forefathers have known it, committed political suicide. But doomed institutions, like threatened men, can last a long time. So long as they act and so long as they last, uncontrolled and unchecked, they can do an infinity of mischief. No one proposes, I certainly do not, to dispense in this country with a second Chamber. I will give a reason

among many others. We have seen and suffered enough from the evils of Single Chamber Government. We hold, as the preamble of this Bill says, that there ought to be a Second Chamber, and that it should be a body which, unlike the House of Lords, rests not on an hereditary, but a popular basis. We think, I certainly for myself think, that the powers of suspensory veto which this Bill confers on the House of Lords are powers which in practice would never be exercised against one party in the State, and that in the long run it would not be expedient to leave them in the hands of such a body as the present House of Lords.

But that is not the question which is immediately before us. The question is this: Are we to wait for relief and release from an intolerable and even a dangerous situation, a situation immediately created by the action of the House of Lords between 1906-09, a situation which places not only legislation but finance at the mercy of an irresponsible and indissoluble authority, increasingly actuated by the most naked partisanship—are we, I say, to wait until, after what must be a long and laborious process, we evolve a new Second Chamber, possessing in its size and composition the qualities which are needed for the impartial and efficient discharge of the functions, and the only functions, appropriate to such a body? In the meantime, is all progressive legislation, however clearly desired and demanded by the people, to come to a standstill? We say "No," and the country has said "No." It has said so twice within twelve months—once in January last, when it approved the principle of our policy, and again when in December it gave its sanction to the definite plan in which that principle is embodied. No, the country requires a present remedy for present evils, and it finds it, as it has declared, in such a limitation of the Veto of the House of Lords as will secure that the clear and considered will, and only the clear and considered will, of the nation shall, after the fullest opportunity for deliberation and reasonable delay, pass into law.

Our plan, as embodied in this Bill, is a very simple one, and all its features are now so familiar that it would be an unpardonable waste of the time of the House if I were to describe them in any great detail. Shortly, it comes to this: It proposes to give statutory definition and protection to the constitutional doctrine that the House of Commons is supreme in finance, at the same time affording, as we believe, adequate safeguards against possible abuse in the guise of what is known as "tacking." Further, it cuts down the absolute Veto of the House of

Lords to a suspensory Veto with the provisions for the lapse of at least two years and of three Sessions, not necessarily in the same Parliament, and the limitation of the term of the life of the House of Commons to five years. That, in a nutshell, is the effect of the measure. I will say nothing about the first clause which deals with finance, except that I feel confident it will be found that the whole of the real controversy between us in this matter is confined to the best way of discriminating between measures which are financial in the strict and full sense and measures which are only incidentally and superficially so. I will say no more about that, but will come to that part of the scheme which deals with ordinary legislation. Here again I will not weary the House by repeating the laboured arguments which I presented less than a year ago, and which, in my opinion, anticipated most, if not all, of the objections and criticisms. I will refer, however, for a moment to the main and principal one, because I know this is honestly entertained, not by partisans only, but by people who desire, if possible, a reasonable solution of our constitutional difficulty. I see it still persistently asserted that our proposals are intended or, at any rate will have the effect, of enabling a despotic Single Chamber to ride rough shod over the electorate of the country. If I may put the same thing in different words, we are charged with enthroning in the subtle disguise of democratic forms a power which may enthrall or set at naught the very spirit of democracy. I want to say with all respect to those who entertain such an apprehension that I think that view to be one of the most unsubstantial nightmares that ever afflicted the imagination. Let me say one thing. We all of us start from one common point—the assumption which lies at the root of representative Government that the House of Commons, itself a product of popular election, is, under normal conditions, a trustworthy organ and mouth-piece of the popular will. The Noble Lord the Member for Oxford University (Lord Hugh Cecil) dissents, but then he does not represent a democratic constituency. (HON. MEMBERS “Oh, oh.”) I confess I thought I should obtain universal assent to that Proposition; but apparently there are some hon. Members opposite who do not agree with it. How else are we to ascertain what the people think or desire?

**LORD HUGH CECIL:** By asking them.

**THE PRIME MINISTER:** The Noble Lord is rather in a hurry. I will come to the Referendum in a minute. I ask how else are we to ascertain the popular will? The Noble Lord says “by the Referendum.” I do not know when he first entertained that idea or how

long it has been a part of his stock of political convictions. But how are we to ascertain the popular will unless we are to substitute, as he and others invite us to do, a plebiscite for the representative system? The whole principle of representative Government is at stake. We are invited to adopt, at the instance of the Noble Lord and his Friends, the principles of the Jacobins and the Napoleons, and substitute them for the well established doctrine of the English Constitution. That is what Toryism has come to!

Having stated a proposition which, I think, is generally accepted, let me, on the other hand, make an admission in the other sense. No one pretends, I certainly do not, that the correspondence between any given judgment of any given House of Commons and that of the electorate is invariable and precise. The House of Commons may, particularly under the unduly long term embodied in the Septennial Act, under which it at present exists, outstay, and we have seen Houses of Commons which did outstay what is called the mandate given to them by the electorate. The House of Commons may pass a measure by a majority small in number, and obviously accidental in its composition. The House of Commons may through the crush of business, or through hasty procedure, pass a measure in an imperfect, incomplete and even misleading form. But these are risks we admit—I for one certainly admit—ought to be guarded against, and we have guarded against them. In the first place we propose to shorten the legal duration of Parliament from seven years to five years, which will probably amount in practice to an actual legislative working term of four years. That will secure that your House of Commons for the time being, is always either fresh from the polls which gave it authority, or—and this is an equally effective check upon acting in defiance of the popular will—it is looking forward to the polls at which it will have to render an account of its stewardship. Further, the delay of three Sessions, or of two years, when the Suspensory Veto of the House of Lords is interposed precludes the possibility—and I say this with the utmost assurance—of covertly or arbitrarily smuggling into law measures which are condemned by popular opinion, and it will, at the same time, ensure an ample opportunity for the reconsideration and revision of hasty or slovenly legislation.

Lastly, and this is as certain as daylight, in ninety-nine cases out of 100, the new House of Commons both could and would reverse legislation which had been shown by the General Election to be opposed to the will of the masses of the electors. The arguments, which I have



just been adducing were used last year, but were not, as I think, and never have been, adequately met. There are, however, new aspects of the situation which have profoundly changed its character since this Bill was read the first time last April. Let me remind the House of what happened. The lamented death of our late beloved Sovereign, early in the month of May, was followed by a political truce, by the setting up and sitting of a Constitutional Conference. I will say of that Conference once more to-day, what I have said before, both in this House and outside, that it was an honest and sustained attempt carried on on both sides with good will, with patience, and with infinite industry, to find a common ground of agreement. I cannot here refrain from offering a tribute of gratitude and of regret to the memory of one of the Members of the Conference, who, to the great loss of the State, by untimely death, has been taken from us. During the three months I sat at the same table with Lord Cawdor, I learned to appreciate his high qualities, and there is no one of my colleagues who took part in those deliberations, on whichever side he sat, who will not join with me in acknowledging the debt due to his fine temper, his sound judgment and his masculine good sense. The Conference failed and the conflict was resumed, but it was resumed, so far as our opponents and critics are concerned, from a somewhat different standpoint and with an almost complete change of weapons. The wholehearted defence of the House of Lords as an ideal Second Chamber, with which we were so familiar in January of last year, was in December little, if ever, heard of at all. The backwoodsmen were cooped up in their fastnesses. They were no longer allowed the free run of the platform. A new model, I should have said, several new models, of a Second Chamber, in which the hereditary principle was to be copiously diluted or destroyed were hastily run up, and my Noble Friend, Lord Rosebery, went about the country declaring that the House of Lords was dead. I will only say that all the schemes so proposed, without exception, so far as I have seen, and been able to understand them, gave us a Second Chamber, still predominantly of one party, and resting on no broad or real basis of popular authority. A still more startling change which the Noble Lord mentioned in his interruption just now, was the sudden emergence, as an integral part of the programme of the Tory party, of the Referendum. I repeat what I said last year, and what I said many times during the election, I am not going to rule out the Referendum as under conceivable conditions, a possible practical expedient for dealing with some excep-

tional case. But according to the proposals recently put forward, the Referendum is to be a normal part of our regular constitutional machine. (AN HON. MEMBER: "No, No.") The hon. Member who dissents is not so well acquainted as I am with the deliverances of the Leaders of his party. The Referendum was first put forward as a possible solution of dead-locks between the two Houses of Parliament. But very soon it developed into a scheme which would apply not only to dead-locks, in which case, I may remark, it would obviously only be exercisable as against Liberal legislation—it was developed so as to embrace any measure. (HON. MEMBERS: "No, no.") At any rate, that is what I understand, I am anxious to be informed—it was developed so as to embrace any measure, even including an exceptional Budget, in regard to which there was ground—to be ascertained by some as yet wholly undefined process—for believing that, though passed by Parliament, it was not in accord with the popular will. I do not know whether that adequately or fairly represents the present development of this scheme, but if I am right a scheme of this sort might work well enough—though I believe there is great difference of opinion about that—in a small country like Switzerland, where the Ministry act as clerks and the Legislature as registrars of the electorate of the country, but to try to apply it to conditions like ours is infinitely more revolutionary than anything contained in this Bill, and would [do] neither more nor less [than] undermine and overthrow the whole structure of representative Government. I am not exaggerating when I say, that it would reduce our General Election to a sham parade and degrade the House of Commons to the level of a talking club.

Lord HUGH CECIL: It is nearly that now.

The PRIME MINISTER: It is so long as the House of Lords prevents its decisions being carried into law, but this Bill will put an end to that state of things. Our system of representation has its drawbacks. Those I fully admit. It has its drawbacks in the uneven distribution of the franchise, the multiplication of qualifications, the inequality of electoral areas. (HON. MEMBERS: "Hear, hear.") We suffer quite as much from that as you do. And it has its drawbacks in the unduly long life of the House of Commons. In all these respects it can be made more perfect than it is. But even as it is it is the best and most practical expedient yet devised for ascertaining and recording and embodying in law the will of the people. That is the root principle, the governing purpose, the aim and the goal of democratic

institutions. It is to-day habitually thwarted and is often frustrated for years by the Veto of a non-representative authority, and we present this Bill to the House once more, approved as it has now been by the people of this country—we present it to the House as the first and the most urgent step towards a more perfect attainment.

*Part Four*

THE CROWN

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"There is something behind the throne greater than the king himself."

WILLIAM PITT, Earl of Chatham, in a speech to the House of Lords, 2 March, 1770

## XII

### A. BERRIEDALE KEITH

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#### A. *The King and His Ministers\**

##### 1. *The Sources of Royal Power and Influence*

The Norman Conquest of 1066 has left a definite impression on the position of the Crown, which is attested by the forms observed in every important sphere of our present government. All the most important executive acts are executed by ministers of the Crown, in many cases with the personal concurrence of the King; all legislation is passed by the King with the advice and consent of the Lords spiritual and temporal and Commons in Parliament assembled; the business of the Courts of Justice is conducted in his name. These forms carry us back to the time when William I by his victory at Senlac secured for himself unfettered power, executive, legislative and judicial. This plenitude of authority he could himself execute with the aid of his counsellors, but the growing complexity of state life little by little circumscribed his power. Henry VIII could still dictate the action of Parliament, but it overthrew Charles I, and the revival of the royal power in the hands of Charles II was followed by the overthrow of his brother. A wide measure of executive authority still remained which Parliament did not control, but the advent of a foreign dynasty accelerated a process already in operation, and under the Hanoverian dynasty from 1714 there was worked out the system under which action on the advice and responsibility of ministers accountable to Parliament was substituted for action by the sovereign at his discretion, subject to the necessity of obtaining from a suspicious Parliament the necessary funds to support his governmental policy and such legislation as might be requisite to give it effect.

The merits of the scheme, which evolved with little conscious direction, are obvious. The executive government is brought into

\*A Berriedale Keith, *The Privileges and Rights of the Crown* (C. Arthur Pearson, 1936). Reprinted by kind permission of the publishers.

vital connection with Parliament, and friction such as marked the relations of William III with the House of Commons is eliminated. The government is carried on without the waste of effort involved in the United States through the difficulty of inducing Congress to give effect to the suggestions of the President and the inability of Congress to persuade the President to accept its policies. It takes something vital, such as the economic depression in the United States, to transform the governmental machinery into an instrument comparable with the British for effective action, and already, with the worst of the crisis over, the inherent difficulty of the co-operation of two independent authorities has reappeared.

While, however, it is established that the King reigns but does not govern except on the advice of ministers, there has never been any question of narrowly limiting the acts of government performed by the King. It is the desire and pleasure of the people to see the sovereign engaged in high acts of State, and government gains dignity and impressiveness from being conducted through the instrumentality of the wearer of the Imperial Crown. But it would be idle to expect that the sovereign would consent in his actions to follow blindly the promptings of his ministers; he is entitled to demand and to be given grounds for all that he is asked to perform, and this right secures for him the exercise of the power of criticism and of advice. *It is far from* the desire of his people that the sovereign should become a mere cypher, and to seek to reduce him to such a position would involve a palpable loss to the State. It is of the essence of Parliamentary government of the British type that ministries should come and go, and that there should be frequent change in the head of the Cabinet. But the King remains, while ministers pass away, and he must accumulate an unrivalled experience of affairs however little he may desire to obtrude his personality. Further, if the King no longer claims to rule by right divine, the prestige of monarchy and the trappings of court ceremonial secure from even the most pronounced adherents of democracy a respectful hearing for any expression of the royal views. As head of the army, the navy and the air force, of the civil service and of the Church, as the fountain of justice and the repository of the prerogative of mercy, as legislator and the source whence flow honours and dignities, the King commands a measure of respect which enhances enormously the weight of his opinion. If to these advantages of office the sovereign adds the authority derived from strength of intellect or character, it is easy to see how deeply he may influence the govern-

ment of the day. It must, of course, be remembered that he enjoys the services of a Private Secretary and that the King and State alike doubtless owe much to the self-effacing work of men like Sir F. Ponsonby, Lord Knollys, Lord Stamfordham, and Lord Wigram. The importance of the office has been enhanced by the process . . . by which in matters affecting the Dominions the King may be advised direct by Dominion governments.

The extent and character of the royal influence on government can best be understood by examining first the actions which the King personally performs under the modern form of government; secondly, the sources whence he derives the advice on which he acts; and thirdly the measure of discretion and authority which remains with him in dealing with the advice tendered to him.

## *2. The Character and Form of the King's Acts of State*

The acts of Government performed by the King fall into two classes according to their legal source. Those which are derived from the common law, that is from usage recognised by the courts of law, are styled prerogative acts, and the prerogative is neither more nor less than that part of the royal authority which is not conferred by statute. Once unlimited and paramount, in the course of time the prerogative has been defined by the courts and its ambit determined. Further it has been decided that the prerogative can be taken away by statute, for the King in Parliament represents the highest manifestation of royal authority and can define the measure of the authority to be exercised by the King without the aid of the two Houses. Moreover it has been ruled that, if statutory provision is made, the prerogative is so far superseded; thus, when a hotel was occupied for military purposes during the war, payment was held to be due for its use under the statute governing the taking of property for public purposes, though the Crown claimed that under the prerogative it was entitled to make use of any buildings to serve purposes of defence in war conditions.

Prerogative powers represent the older side of the royal authority, its responsibility for the maintenance of peace and order, for the defence of the realm, for the conduct of external relations; the social and economic functions which now are so vital a part of the business of the State are largely a modern development, and the functions conferred by statute on the King in these matters are essentially formal, such as the making of Orders in Council dealing with important

regulations, while the great mass of the work to be done is assigned expressly to the government department concerned, the Minister of Health, Labour, Transport or Pensions.

It is an inevitable result of the historical development of the kingship that the duties still personally performed by the King should be of the most miscellaneous character, varying from matters of fundamental importance to those of minor consequence. His powers as regards Parliament, the judiciary, honours, and the Empire will be described below, and it must here suffice to mention a number of his activities. The appointment of all high ministers of State, from the First Lord of the Treasury downwards, rests with him; from him officers of the army and the air force derive their commissions, though naval officers hold theirs from the Lords Commissioners of the Admiralty, and in the older Universities of England and Scotland a number of Professors hold their appointments from him. The old power to preserve order in times of domestic upheaval or war by the issue of a proclamation of martial law has passed away; but the Emergency Powers Act, 1920, which arms the government with special authority to deal with crises such as the general strike of 1926, is brought into operation by a proclamation issued by the King, attesting his concern with the peace and security of his people in life and property alike. The external affairs of his country involve his constant interest and action; he issues letters of credence to accredit his representatives to foreign governments, and receives in audience ministers accredited to him by foreign powers; he grants full powers to negotiate treaties and signs ratifications of treaties when concluded; war, peace, and neutrality in the wars of other countries are proclaimed under his signature. The representatives of the country in foreign lands are appointed by him, and he signs the *exequaturs* which permit the consuls of foreign powers to exercise their functions. The rights and liabilities of aliens in this country are regulated in essentials by Orders of the King in Council made now under statutory authority.

Defence again claims much of the King's attention; the Army and Air Councils, the Board of Admiralty are constituted by his consent, and as in the case of foreign affairs, all matters of importance are submitted for the information and approval of the Crown. But, though by historical tradition these issues claim special royal concern, they have come in the course of time to share their importance with issues of social and economic well-being, as well as problems of finance and trade. The days are long past since the King controlled income and



expenditure, but the sums that are granted by Parliament are still granted to the King, and his formal order is required as a preliminary to the process by which the proceeds of the taxes which we pay are expended on the purposes which have been approved by the House of Commons. Though save for the making of Orders in Council comparatively few issues connected with the new activities of the State are brought before the King for formal action on his part, the ministers in charge of these departments are appointed by him, and they owe him the duty of bringing to his notice all matters of first class importance.

The forms in which the royal action in executive matters is expressed are now comparatively simple. The most formal are Orders in Council, which are used, for instance, to regulate the exercise of belligerent rights in time of war; to prescribe the duties of aliens; to grant the benefits of the preferential tariff to exports from mandated territories; to regulate air navigation; to regulate lighthouse dues; and to effect many other purposes. The mode of passing such orders is simple. The King presides over a meeting to which three Privy Councillors at least are summoned, and the draft Order which is normally prepared by some government department is laid before him for approval. In certain cases the desirability of securing wide publicity results in the use of the form of proclamation, the terms of which are approved in draft by an Order in Council, and the document then is made public, bearing an impression of the Great Seal of the Realm as a token of its authenticity. This form is used for declarations of war or peace, or to declare emergency, or to notify changes in the coinage, which, formerly a royal prerogative, is now regulated by statute.

A third form of instrument is Letters Patent, also under the Great Seal, which are used to constitute the Commissions of the Treasury and the Admiralty, to confer certain Professorships, and to constitute corporate bodies. The same form is adopted for judicial purposes, including the appointment of judges, to authorise the royal assent to Bills of Parliament; to confer dignities; and to authorise a Dean and Chapter to elect a Bishop or the Convocations to alter Canons.

Appointments, when not made by Letters Patent, may be conferred by commissions or by warrant signed by the King; such warrants are also regularly used to authorise the issue of Letters Patent, serving as an order to affix to the latter the Great Seal which is in the charge of the Crown Office controlled by the Lord Chancellor. Writs under

the Great Seal are employed to secure the election of members of Parliament and to summon peers to attend.

In the making of treaties special forms are observed. The negotiation and signature of a treaty are authorised by Full Powers granted to the British representative at a foreign court; this document bears the Great Seal, and is signed by the King on the authority of a warrant also signed by him, and in like manner the treaty is ratified by an instrument signed and sealed.

### 3. *The Responsibility of Ministers for the King's Acts*

These and other actions of the King in every sphere of his official activities are performed on the advice of ministers who for the royal actions are responsible to the House of Commons. The King himself is *answerable to no power on earth for what he does, and that very fact* places him under an absolute moral obligation not to act without advice, responsibility for which can be brought home to the giver. That the command of the King was no excuse for wrong doing was definitely established when under Charles II Danby was impeached by the Commons for action taken on his sovereign's express bidding. So definitely established is now the doctrine that as early as 1834 when Sir Robert Peel accepted office in the belief that his predecessor, Lord Melbourne, had been dismissed by William IV. he asserted in Parliament in 1835 his duty to accept full responsibility for the royal action, though *ex hypothesi* it had been taken without even his knowledge. We know now that the King did not actually dismiss Melbourne, who had offered resignation which was in effect accepted, but the principle remains absolute, and it serves as a most definite limitation of royal authority; the King cannot dismiss a ministry or cause its resignation unless he is able to replace it by another, for the business of the country must be carried on and it can only be conducted with the aid of ministers enjoying the confidence primarily of the majority of the House of Commons, and ultimately of the electorate.

Responsibility meant formerly liability to punishment at the instance of the Commons by sentence of the House of Lords through the process of impeachment, or by an Act of Attainder or of Pains and Penalties passed by both Houses and assented to by the Crown. But these proceedings may now be deemed obsolete, and the only penalty is loss of office and of public favour, should the House of Commons disapprove the advice tendered to the Crown.

In the case of most of the acts of the King the person responsible is

definitely marked out by the rule of countersignature. From quite early times, though the King was largely above control, nevertheless paramount considerations of the necessity of preventing hasty action and of securing due record of royal deeds led to the rule that legal effect would only be given to documents bearing the royal signature, if authenticated by a seal and countersignature. Hence responsibility rests directly on the minister who countersigns a royal warrant or commission of appointment, and on the Foreign Secretary who countersigns the royal warrants for the issue of Full Powers and instruments of ratification of treaties. The matter is less simple in the case of Orders in Council, for the counsellors who are present need not be ministers, though one normally is, and they usually know nothing of the business to be transacted. But the matter is easily cleared up; it will be found in every instance that the Order rests on the responsibility of some definite minister, in whose department it has been prepared and by whom it has been despatched to the Lord President of the Council with an application for its submission to the King in Council.

But apart from this individual responsibility there remains the responsibility of the Cabinet as a whole. Despite the rule of the solidarity of the Cabinet, which in theory means that the whole body is responsible for the error of one member, it is recognised that an individual may by resignation enable his colleagues to disclaim effective responsibility. The resignation of Sir S. Hoare after the repudiation by public opinion of the terms which with M. Laval he offered in December 1935 to the Emperor of Ethiopia, as a base for the settlement of the war between that sovereign and Italy, was held to excuse the Cabinet, despite its acquiescence in his action, from resignation in deference to the unanimity of public condemnation of this surrender of the principle of founding British foreign policy on the doctrine of strict adherence to the terms of the Covenant of the League of Nations. But that was an exceptional case, and normally all great issues in public affairs are decided by the Cabinet and accepted on its advice by the King, and responsibility then rests with the Cabinet rather than with any individual member.

#### *4. The King's Part in the Formation of the Cabinet*

Though ministers are responsible for the King's acts, the King has definite, though limited, means of securing that his views shall have weight with the Cabinet in framing the advice which is finally

tendered for his acceptance. The Cabinet was at one time the mere instrument of the royal will, and its personnel depended on the royal favour. It has now come to represent the choice of the electorate voting at a general election, at which it either renews the mandate of the government in power or indicates that it has ceased to possess its confidence, in which event the ministry tenders its resignation to the King. By conventional practice the rule is now established that, if a ministry dissolves Parliament and is defeated at the general election, it will resign office, as soon as the results are definitely established, without waiting for the meeting of the House of Commons to pass judgment on its actions, provided always that the result of the election makes it clear that some opposition party has a majority sufficient to enable it to form an alternative government. The rule is based on considerations of much cogency; it is contrary to the public interest that the power of government should remain in the hands of those who no longer can count on popular approval; hence the resignation of Mr. Baldwin forthwith in 1929. But, if it does not appear that another ministry can certainly be formed, the conventional rule of resignation has no application, and Mr. Baldwin in 1924 faced the verdict of the Commons, when the election had deprived him of his majority but left his party in possession of a greater number of seats than either the Labour party or the Liberals.

In the event of the resignation of the ministry it falls to the King to take the decisive step of selecting a new Prime Minister. It follows inevitably from the rule of responsible government that for once there is no one capable of offering advice which the Crown is bound to consider; the resignation involves the loss of the right to tender advice. The Crown may ask advice, but that is a matter entirely of discretion. When the greatest Prime Minister of the nineteenth century retired in 1894, his sovereign was careful not to ascertain his views, and on her own responsibility the Queen selected Lord Rosebery for the office, though Gladstone himself would have suggested Lord Spencer, and Sir William Harcourt had reasonable grounds to claim the succession.

It is clear, of course, that this right of selection is definitely limited. The essential condition is that the person selected to form a ministry must be able to carry out this end, and accordingly the royal discretion is always limited by the necessity of having close regard to the feeling of the House of Commons. But it must be remembered that members of the Commons are intensely eager to take part in a ministry

and the person who is commissioned by the Crown has a very strong lever to compel acceptance of his leadership in the shape of the control of offices. It was by this power that Sir H. Campbell Bannerman was able in 1905 to form a cabinet despite the initial reluctance of Sir E. Grey, Mr. Haldane and Mr. Asquith to serve under him in the House of Commons. Hence too it is hardly correct to hold that the King's selection of Mr. Baldwin in 1923 on the resignation from ill-health of Mr. Bonar Law, who tendered no advice as to his successor, was necessary, and that the passing over of Lord Curzon was dictated by conditions which he could not control. Lord Curzon himself had no doubt that the choice would fall upon him, and it may well be that, if he had received the royal commission, he would have succeeded in forming an effective ministry. That the King's exercise of his discretion was sound can hardly be doubted; it rested unquestionably on the plain fact that the strength of the opposition was to be found in the House of Commons, and that it was right that the Prime Minister should there be present to meet the fundamental attacks on his policy. Doubtless the King was aware that there was strong support for Mr. Baldwin in the ranks of his party, but it is impossible to hold that the royal freedom of choice is a matter of the past. Inevitably it often happens that no real choice exists; Queen Victoria would not willingly have accepted Gladstone in 1880 or 1892, and in 1916 the selection of Mr. Lloyd George as head of the government was necessitated by the fact that only under him could an effective coalition be achieved. But, so long as human nature remains unchanged, when outstanding personalities are lacking as at the present day, the King must have a real discretion in the choice of a new Prime Minister.

A most signal proof of the powers and obligations of the Crown is afforded by the events of 1931. The ministry of Mr. R. MacDonald had adopted a reckless financial policy, which involved meeting the ever growing deficit in the unemployment insurance fund by borrowing. The danger of the situation at last was brought home to the Government by the report of the Committee on Economy under Sir George May, which by its frankness created widespread doubt abroad as to the stability of British finance. The necessity of balancing the budget became obvious to all competent politicians, but the efforts of the ministry to devise a scheme, under which increased taxation and diminished expenditure especially in unemployment would secure this result, came to grief on the stubborn opposition of the Trades Union

Council, and the rank and file of the Labour party, who believed that the situation had been exaggerated and denied the necessity of accepting the demands of the Bank of England. In the result the Cabinet itself proved to be divided; four of its leading members, the Prime Minister, Mr. Thomas, Mr. Snowden, and Lord Sankey were united in favour of drastic measures, while the other members, grouped under Mr. Henderson, declined to accept the necessity of the measures advocated. In the result the King arrived in London on August 23, and on the following day the Prime Minister resigned office, and was commissioned to form another government from which were excluded his former colleagues and which was at first made up of four Labour members, four Conservatives and two Liberals. It is easy to see that in this crisis the King had a wide range of possibility of action. The more obvious course was to accept the Prime Minister's resignation and commission Mr. Baldwin to form a ministry, and there can be no doubt that the latter could have succeeded in the effort, though he would have required to receive a dissolution of Parliament in order to be able to secure the necessary support in the House of Commons. Doubtless it was the disadvantage of an immediate election, and above all the advantage of the co-operation of the great parties, which induced the royal decision in favour of Mr. MacDonald. It was impossible to know at that time what the election of 1931 was to prove, that the Labour members of the National government were without any substantial following in the country. Not until 1935, therefore, on the resignation on the score of failing health of the Prime Minister, was the Prime Ministership formally conferred with general agreement on the real leader of the ministry, Mr. Baldwin.

The royal authority does not extend to the determination of the selection of the other members of the Cabinet: it falls to the Prime Minister to make his own selection, though in the case of the Labour party it is now contemplated that the allocation of ministries shall not take place without consultation between the three bodies which control Labour policy, the party in Parliament, the Trades Union Council, and the Executive of the Labour Party. But there can be no doubt that the fact that the list of ministers proposed must be submitted for royal approval before it is finally decided upon secures the Crown the opportunity of taking exception to appointments of ministers if just grounds exist. Queen Victoria, of course, in this as in other matters asserted rights which it would not now be possible to maintain. She negatived the appointment of Mr. Labouchere and of Sir Charles

Dilke after his appearance as a co-respondent in a divorce case; in 1892 she would not hear of Lord Ripon as Secretary of State for India, and she was both ready with suggestions for filling offices and not unsuccessful in securing Mr. Gladstone's acceptance of her wishes. Edward VII was less active in this regard, and intervened in 1905-6 only in regard to the political members of the royal household, a matter clearly within his constitutional rights. The adoption of this attitude of reserve was striking, for the new ministry was by far the most democratic which had ever been appointed, and one of its members, Mr. John Burns, early strained the royal patience by the issue of an election address advocating the abolition of the House of Lords, and a little later the King was forced to remonstrate through the Prime Minister regarding the terms of unrestrained abuse of the upper chamber indulged in by Mr. Lloyd George. He accepted, however, without demur his selection for the office of Chancellor of the Exchequer on the reorganisation of the ministry after the death of Sir H. Campbell Bannerman.

### *5. The King and the Policy of the Cabinet*

The essence of the relations between the Crown and ministers demands that there shall be complete confidence on either side. It follows therefore that the sovereign shall not go behind the back of his government in order to seek political advice, for such action destroys the reciprocal duty of confidence owed by the Cabinet to the sovereign. Though the principle is clear, it is plain that it is not altogether easy to give it full effect, and Queen Victoria, it must be admitted, was far from acting on the principle. From the time when she fell under the spell of Disraeli's flattery her sentiments towards Gladstone were so distorted that her actions were wholly unconstitutional. With the aid of her defeated Prime Minister she worked indefatigably in the effort to secure Lord Hartington as his successor, a plan foiled by Gladstone's very proper refusal to serve under so mediocre a minister, and only his death terminated her secret communications to her former adviser. Nor was she more loyal to Lord Rosebery despite his constant deference to her wishes. Instead she consulted Lord Salisbury, Sir H. James and others in 1893-4 with a view to forcing a dissolution of Parliament or the resignation of the ministry because it threatened to deal with the House of Lords. The excuse given by Lord Salisbury for giving her the advice which she sought is significant; he justified his action by the consideration that

he was a former servant and a Privy Councillor. It is, however, plain that neither ground was adequate justification for his action; the right of a Privy Councillor to advise must be exercised in a constitutional manner, when he holds official rank. So again the right of a member of the House of Lords to offer advice, even unasked, is a relic of an obsolete past, inconsistent with the modern constitution.

Edward VII's attitude was far more constitutional than that of his mother; while it is true that he invited apparently without the prior assent of his ministers the opinion of Lord Cawdor in 1909 on the right of the House of Lords to compel reference to the electorate on the Finance Bill of the government, after receiving the latter's view, he did not fail to obtain the concurrence of the Prime Minister in his interviewing the leaders of the opposition in the two Houses with a view to seeking some compromise. In this he followed the precedent set by his mother when with the assent of Gladstone she arranged for compromise between the government and the opposition regarding the disestablishment of the Irish Church in 1869 and the reform proposals of 1884, though his efforts had not the success which marked those of the Queen. It fell, therefore, to George V. to seek to deal with the situation which had emerged, and it seems clear that his action in endeavouring to secure accord by private discussions with leaders of the opposition on the Parliament Bill in 1910 and on the Home Rule proposals of the ministry in 1914 was carried out with the full knowledge of his Prime Minister and with his assent.

It is, of course, impossible to demand that the King should never receive suggestions on public issues from persons not members of the ministry; the freedom of modern intercourse between the King and his subjects would render any rigid rule impossible, and the King's Private Secretary inevitably is the recipient both verbally and in writing of expressions of opinion by ex-ministers and other public men, the substance of which may or may not reach the sovereign. But the essential rule is that in any issue of importance the sovereign shall not seek advice from persons in politics not members of his government, unless he has received the concurrence in such action of his Prime Minister, and such advice as he does receive must, of course, be discussed with the latter.

It follows further from the relations that must subsist between the King and his ministers that on all matters of governmental concern all that he says in public must be approved by ministers. The violation



of this rule has been virtually unknown of late years. Matters have vitally changed since William IV could virtually censure in public the colonial policy of his ministry, moving even that long suffering body to energetic protest. The Cabinet for its part owes a reciprocal consideration to the King. However strongly it feels the action of its opponents or of the House of Lords, courtesy requires that the terms of the royal speech at the opening or close of Parliament shall be couched in terms of studious moderation, and deference to the feelings of the King has caused the faithful observance of this tradition even during times of considerable strain.

A point of difficulty arises in regard to the extent to which the government is bound to submit its plans for royal information, before discussing them in the country. Queen Victoria on this head entertained clear views; she strongly disapproved of Lord Rosebery raising outside Parliament the issue of reforming the constitution by taking from the House of Lords the right summarily to mutilate or to reject measures approved by the Commons. But there is much force in the retort elicited even from the diplomatic Rosebery, who insisted that it would be undesirable to establish the principle that a minister before laying a matter before a public audience should receive the approval of the Crown, for such a principle would tend to make the Crown a party to the controversies of the day and would hazardously compromise the neutrality of the throne. Needless to say, the Queen was not persuaded, the less so since Lord Salisbury, whom she had consulted, assured her that Lord Rosebery had no constitutional right to announce a totally new policy on a vital matter without taking the royal pleasure, and that, if he failed to convince her of the wisdom of his policy, it was his duty to resign. But the doctrine is plainly preposterous, and Edward VII contented himself with the far more reasonable suggestion to his Prime Minister that subordinate ministers should not announce policies of which the Crown had not been informed; the offender was Mr. Lloyd George, who was understood to have announced the intention of the government to establish a ministry for Wales. It is, of course, clear that the matter presents difficulties. A government may wish to ventilate possible policies, which it has not matured to a shape for presentment to Parliament, and which it is not therefore anxious to bring before the King. The most that can be said is that with full confidence between ministers and the sovereign it should seldom happen that any policy of

importance meditated by the ministry should fail to be mentioned to him, so that, if he should feel interest therein, he can secure that further details shall be placed before him.

In regard to matters which are ripe for action the position is essentially different. The Crown is plainly entitled to full information as early as practicable; despite the passage of years there is nothing obsolete in the famous admonition addressed in 1850 through the Prime Minister to Lord Palmerston by Queen Victoria. The Queen demanded that her minister should state distinctly the policy for which he sought sanction, that he should not depart from the sanction given, that he should inform her of his discussions with foreign representatives before important decisions based on that intercourse were taken, and that drafts of despatches intimating decisions should be sent to her in time to enable her to express her views on them. Palmerston's recalcitrance resulted in 1851 in his loss of office, and the Queen's right was never thereafter called in question. Of course with the passage of time and the increased rapidity of the rate of despatch of public business much must be done with greater speed and informality than contemplated by Her Majesty who loved to work by correspondence, but it is still essential that the King should receive copies of all important Foreign Office telegrams and correspondence and that he should approve all decisions of importance.

In the conduct of foreign affairs the sovereign is traditionally deeply interested, and the Queen's close connection by relationship with nearly all the heads of governments in her time increased her determination to remain in effective touch with these issues. She was enabled thus to aid the policy of her ministers by private communications to foreign sovereigns, sent with the assent of her ministers, and to give them advice based on letters received from abroad. Thus in 1864 on representations from her daughter, the Crown Princess of Prussia, Sir A. Buchanan, and in 1870 Lord Augustus Loftus, were recalled from the Berlin legation. Her sympathies, on the whole, led her to favour co-operation with Germany: hence her support in 1863 of the refusal of the ministry to lend aid to the rebels in Poland and her urgent advice to refuse intervention on the side of Denmark in the affair of Schleswig Holstein in 1864. But her distrust of Prussian policy induced her before Sadowa (July, 1866) to contemplate joint action with France and Austria. After the Prussian victory her efforts changed in favour of forming such relations with Germany as would deter France from hostility, but her ministers would not accept her sug-

gestion. She intervened successfully in 1870 at their request to secure the withdrawal of the candidature of Leopold of Hohenzollern for the Spanish throne, and, when the genius of Bismarck still provoked France to declare war, she endeavoured to move the King of Prussia to accord generous terms to the defeated foe. In the same spirit in 1875 she was active in denouncing the German project of an attack on France. On the other hand in the eastern question from 1876-8 her own desire was to precipitate war with Russia, a desire deftly parried by Disraeli, though even he was confronted by threats of abdication if Russia were to appear in force before Constantinople. In her later years she was confronted by evidence of the growing enmity of Germany and the hostility of the Emperor to the Prince of Wales and his own mother, and in 1896-8 there are signs that she had come to fear British isolation and to contemplate the possibility of an entente with France and Russia. It was an omen of the future that she was careful to press that every consideration should be shown to France over the episode of Fashoda, and the retreat of the French government from a false position be facilitated.

The interest of the Queen in foreign affairs was fully shared by Edward VII, and the retirement from office of Lord Salisbury, the determined apostle of insularity, enabled him to work in effective unity with his ministers for the formation of relations of abiding character with France, achieved in 1904 largely through the effective use of the sovereign's personal appeal to the French people. His influence was successfully used to prevent the deplorable incident of the Dogger Bank, when the Russian fleet in panic fired on British trawlers mistaken for Japanese war vessels, leading to war with Russia, and the entente concluded in 1907, which secured India from Russian menace, was in large measure promoted by him, while accords were achieved also with Spain, Portugal, and the Scandinavian countries. Needless to say, the sinister policy of encirclement of Germany ascribed to him by German politicians was wholly unknown to the King or his ministers, and he made earnest efforts to win over his nephew to co-operation for peace. While his efforts proved unavailing, his reign forms a classical instance of royal activity in harmony with ministerial advice. No opportunity to rival his father's success was afforded to his son, who had never established such contacts with foreign governments as had his father, and the late King's action in external relations was mainly based on ministerial advice. But it may be noted that his strict sense of constitutional duty prevented his urging intervention in

favour of Constantine of Greece or after his death of George II, while to his influence may justly be set down the determination of that monarch on his recent restoration to adhere firmly to the role of a constitutional monarch in lieu of accepting the control of the royalist leader by whose energy he had been restored to power. The pardon extended shortly before his death to the great patriot, M. Venizelos, reflects the true spirit of British monarchy applied to the conditions of Greece.

Mention should also be made of the unfailing courtesy of the sovereigns to the United States, of the wise restraint urged by the Queen on the advice of the Prince Consort in 1861, in the episode of the *Trent*, and of the friendly relations between Edward VII and President Roosevelt.

Royal activity has also been displayed consistently in the field of defence. Queen Victoria, however, was not happy in her attitude, for the Duke of Cambridge, her cousin, was a resolute opponent of reform and under his influence she resisted the changes suggested by the Hartington Commission. It took all the tact of Sir H. Campbell-Bannerman to induce her in 1895 to insist on the Duke ceasing to be Commander-in-chief, and even then she insisted that the Duke of Connaught should be at no distant date awarded that office. Yet it must be remembered that she assented to abolition of the purchase of army commissions, exercising at the instance of the ministry statutory power to do so, when a Bill for the purpose was obstructed in Parliament. Edward VII's interest in the army was of a far more practical and useful type. He insisted to the full on the necessity of consultation, and held up the pay warrant of Mr. Arnold-Forster until his criticism of the treatment of officers had been met, and he compelled that minister to apologise for failure to show him due deference in the form of submissions. To Mr. Haldane's schemes for army reform he gave unsparing support, though not unmingled with criticism; it is significant that he supported Mr. Haldane vigorously against opposition in the Cabinet, but expected him to reassure him when his scheme fell under the criticism of Lord Roberts and others. In matters of high appointments he took special interest; he discerned the merits of and promoted the advancement of Haig and Kitchener, and his own brother fell under his displeasure when he refused to fall in with the wishes of his minister regarding the tenure of office as commander-in-chief in the Mediterranean. Nor did details evade his interest; uniforms and greatcoats evoked fruitful comment, and the King's interest restored to the Duke of Cornwall's Light Infantry

the red pagri granted to commemorate the red tuft granted to its predecessor, the 46th regiment, for distinguished valour in the American War of Independence in 1777. To his successor fell the duty of affording in the vicissitudes of the Great War the most unfailing support to his ministers and encouragement to his forces by his ceaseless interest in their welfare and achievements.

Though external relations and defence are the subjects, other than constitutional issues, which will be discussed below, in which royal influence has been mostly notably exerted, the rule that the sovereign must be afforded the fullest information on all governmental action, so that he may have the necessary knowledge on which to base advice, encouragement and warning, is applicable in every sphere. Queen Victoria's interest in imperial affairs was closely bound up with matters of defence, apart from her determined and finally successful efforts to secure the title of Empress of India, which was proclaimed on Jan. 1, 1877. Her deep repugnance to the evacuation of Candahar, when the forward policy of Lord Lytton was reversed by the Liberal Government, led to a constitutional struggle of much interest; at Osborne on Jan. 5, 1881, her assent to the announcement in the speech at the opening of Parliament was won only after a plain warning that to disapprove was to eject the ministry, and that on the eve of the opening of Parliament was revolution: the indignant Queen complained that she had never before been treated with such want of respect and consideration in the forty-three and a half years she had worn her thorny crown. Her indignation was aided by unsound assertions of Prince Leopold and Beaconsfield that the speech was the expression of the royal views and not those of ministers, a view which had been recognised to be absurd as early as the days of Swift and Wilkes and which had been disowned firmly in the Queen's own reign by Peel in 1841. She resented also the retrocession of the Transvaal, and her indignation over Gordon's death led her into the indiscretion of a telegram *en clair* to her Prime Minister couched in unwise terms. Her sympathies with the difficulties of Indian princes led her to wish to cancel the death sentence pronounced in 1891 on the miscreant who procured the murder of the Commissioner of Assam at Manipur, but the Viceroy wisely remained firm, and the Secretary of State supported him. In matters of domestic interest her initiative was slight; she disliked women's rights, and would have wished to see education made more practical and better suited to the functions of the working classes; in this as in other matters she displayed her complete sympathy with the typical middle-class opinions of the day.

Edward VII's activities in the field of foreign affairs confined within narrow limits his concern with the Empire. On the question of the controversies raised by Lord Curzon as Viceroy he was content to follow the advice of his ministers, but he dissented strongly from the desire of Lord Minto, supported by Lord Morley, to create a precedent by the introduction of an Indian to the Council of the Governor-General, the final authority in matters of Indian Government. It was only with unfeigned reluctance and at the express recommendation of the Cabinet that he accepted the advice of his minister. In domestic issues he was strongly opposed to the movement for women's suffrage, and he regarded with no great enthusiasm the advanced democratic views of his ministry, but the constitutional struggle between the Houses absorbed his chief energies in domestic affairs.

On the other hand the affairs of the Empire occupied much of the interest of George V, who found time to visit India to be acclaimed as Emperor and to announce the policy of the transfer of the capital from Calcutta to Delhi, thus inaugurating a new era in the history of India. Constitutionally the episode was of high importance, for Parliament had not been consulted, and the assent of the sovereign to the change and the announcement made on his express authority precluded the possibility of party criticism, and might therefore be resented. In this as in other issues the King showed his determination wholeheartedly to support his ministers when he did so at all; no lack of support was shown either to the first Coalition of 1915, or the Radical transformation of 1916 either during or after hostilities, even when the franchise in 1918 was widely extended and women were included. It is undoubted that in the matter of Ireland his heart was deeply set on securing peace; doubtless it is absolutely true that the terms of the speech with which he opened the first Parliament of Northern Ireland on June 22, 1921 were used on the responsibility of the ministry, as by royal command Mr. Lloyd George assured the House of Commons on July 29. But there seems sound reason for the belief that the effort to secure peace was warmly urged by the King, and he certainly accepted the treaty of December 5, 1921, with a measure of goodwill which would have been inconceivable in his father.

#### *6. The Limits of Royal Influence*

The royal influence, as we have seen, is far-reaching; the publication of the Letters of Queen Victoria and of the various Lives of

Edward VII have revealed how little truth there is in the conception formed in 1867, by so acute a mind as that of Walter Bagehot, of the Crown as of high dignity but little efficiency in the constitutional system. Queen Victoria came to the throne when its prestige had been ruined by the insanity of George III, the vicious character of George IV, and the feeble-mindedness of William IV, and when its power had been undermined by the passing of the Reform Act of 1832, which at long last secured popular control of the House of Commons. The Crown could never regain power of the old sort; it could and did, thanks in part to the wisdom and skill of Prince Consort, achieve influence, and it is impossible to define the extent to which it may be exercised. Nor is such influence unconstitutional; it is picturesque to speak of the events of 1931 as a 'Palace Revolution' and of Mr. MacDonald as a 'King's favourite,' and to describe the formation of the National Government as 'the greatest constitutional experiment since Party government was introduced.' But the truth lies rather with the declaration of Lord Passfield, who passed through the crisis as a dissident from the policy of Mr. MacDonald, and who asserted that 'the King never went outside his constitutional position.' The influence of the King is constitutional, because it is a natural development from the position which the constitution assigns to him; he acquires it from continuity in office, from access to the fullest information, from personal qualities, and from the enormous prestige attaching in British society among all ranks and classes to the person of the King. It is constitutional also because its exercise has public approval. The general election result in 1931 proved conclusively that, as Queen Victoria reflected despite her retired life with amazing precision the outlook of the middle classes who held political power, so the King, deeply familiar with a far wider range of the interests of his subjects than his grandmother, knew better than his critics what would appeal to the country.

What limits can be set to this influence? It is clear that it exists and can be exercised only in so far as it represents the views of a substantial section of the opinion of the country. Mere personal views would be without weight; at most a complaisant minister might decline to press on his sovereign an appointment unacceptable to him. Yet Sir H. Campbell-Bannerman would not yield to the wish of Edward VII to have Lord Farquhar as Lord Steward, though it is hard to see what sound reason existed for thus refusing a personal wish of the King, and Mr. MacDonald in 1924 agreed that in future the

office should cease to be regarded as a political office. But the real question is how far a ministry should be resisted on a matter of public character on which the King holds views shared by the opposition in politics.

There is agreement, of course, that the King is entitled to use all his influence to secure the assimilation of contending views. Queen Victoria's action in 1869 on the disestablishment of the Irish Church, and in 1884 on the franchise and redistribution issues has always won approval, as have the efforts of Edward VII to bring about accord between the parties on the issue of the House of Lords and the royal share in securing the abortive but earnest conference on the Parliament Bill in 1910 and on the Government of Ireland Bill in 1914. But how much further can the King go? He can, it seems, without definitely breaking with tradition, investigate the possibility of dividing the Cabinet. On this issue there has long been much divergence of view. The Cabinet is a unit; it gives its advice as a single whole, to the sovereign and to Parliament alike. But it is clear that there is nothing to prevent the Prime Minister divulging to the King the existence and character of differences of view. Lord Palmerston indeed, and after him Gladstone, adhered to the rule that dissensions should not be revealed, but in 1885 the Queen asserted, doubtless correctly, that Melbourne, Peel, Russell, and Disraeli had given her such information and there is abundant evidence that Salisbury, Rosebery, Balfour and Asquith were quite prepared to admit the existence in their Cabinets of conflicting views. It may be that Gladstone was right in denying absolutely the claim of the sovereign to be informed of the views of individual members; but in effect cabinet dissensions are easily enough known, and the sovereign who is in constant contact with individual ministers on the matters of their departments cannot fail readily to learn whether the policy presented to him on behalf of the Cabinet really commands its united support. If it does not, it would be too much to expect that a sovereign with strong convictions as to the welfare of the country should fail to exploit differences with a view to securing a modification of the Cabinet policy. Queen Victoria in 1859 and 1864 had no hesitation in using Lord Granville in an effort to thwart the policy of Palmerston and Russell, when she believed that they did not command undivided support in their policy in the Cabinet, and the precedent remains.

A further means of influencing ministers unquestionably exists, though its constitutionality may be gravely questioned. Queen Victoria



in the Russian crisis of 1877-8 was deeply opposed to surrender to Russian demands and unequivocally threatened abdication, if her will were not complied with. Her insistence secured capitulation by her Cabinet, which without the Sultan's leave sent the fleet to Constantinople with decks cleared for action and orders to fire on the Turkish forts if their passage of the Straits was denied. Thoughts of this way out of his difficulties seemed to have passed through the mind of her son in the crisis of the conflict between the two Houses. The force of such a threat might clearly be compelling. A ministry which persisted in a policy that the Crown would not sanction would clearly be placed in a very difficult position by abdication. It is plain that a dissolution must follow, and the sentiment for royalty in the country is such that disaster might well overtake the ministry held responsible. What is certain is that the mere belief that abdication would follow would induce all the less advanced members of the governmental party to dissuade their leaders from proceeding with their policy. On the other hand, it must be remembered, abdication is *prima facie*, when not based on physical or mental failure, the attitude of a coward, deeply distasteful to sovereigns of a house which has never lacked courage, and, should the ministry be sustained by the electorate, the monarchy would have received a fatal blow. It must, therefore, be held that abdication cannot be deemed a legitimate method of coercing acceptance by a Cabinet of the royal wishes.

There remains, therefore, for consideration the right of the Crown to remove the Cabinet from office, either by formal dismissal, or by the less drastic method of compelling resignation by refusal to perform some vital act of sovereignty, since ministers must either then acquiesce in the sovereign's decision or resign. The right of the Crown so to act is beyond question. The constitution contains no provision such as that of the French Constitution which places the President in the absurd position that he cannot act without the counter-signature of his Premier, so that strictly speaking he could not remove the latter from office save with his own co-operation. It is true that the last precedent of dismissal goes back to 1807, for the alleged dismissal of Melbourne in 1834 by William IV was virtually suggested, and certainly acquiesced in, by that remarkably easy-going statesman. But it would be absurd to regard the right as obsolete. All the conventions of the constitution which govern the existence of responsible government are valid only in so far as they deal with normal situations. There is always the possibility of the emergence of abnormal conditions

Crown again assents to Bills passed by the Houses; in this case also the duty is normally delegated to three Lords by a Commission signed by the King; in their presence the titles of the Bills are read, and the Clerk of the Parliaments declares the royal assent in Norman-French. The opening of Parliament is marked by the delivery of the King's speech which is, as we have seen, essentially the work of ministers and indicates the programme of legislation before the Houses; the closing of the session is the occasion of another speech summarising the work effected and commenting on any other matter which seems desirable to the government.

In these matters the action of the King is normally formal, but since Edward VII revived the practice it has become normal for the King in person to deliver his opening speech amid the splendours of a formal gathering of the House of Lords; not since 1886 had Queen Victoria consented so to act, and even then the speech was read by the Lord Chancellor. The closing speech is still delivered by Commission. On no other occasion may the King address the Houses. Other communications are essentially formal, relating to requests for supply or placing at the disposal of Parliament some royal property right or prerogative, for it is the rule that special royal sanction should be given to the discussion of any matter such as a Bill for the creation of life peers or for the reform of the House of Lords which affects directly the royal prerogative.

## *2. The Prerogative of Dissolution*

The summoning of Parliament annually is essential in view of the fact that the army and air force are governed by an annual Act which must be renewed if it is to remain possible to maintain these forces, and that the appropriation of revenue is essential if the government is to be carried on; failure in these matters is unthinkable, but the King could compel action were it being delayed. The real element of personal action is involved in the grant of a dissolution otherwise than towards the close of the normal period of a Parliament's existence, now fixed by the Parliament Act, 1911, at five years. The action of the King cannot be automatic, and it must constitutionally be based not on the advice of the Prime Minister alone. When Mr. Baldwin in 1935 insisted that the decision of the date of dissolution rested with him alone, it must be understood that the Cabinet had advised and the Crown had assented to a dissolution, leaving the Prime Minister to fix the actual date. It would clearly be a most dangerous increase of

the already excessive power of the Prime Minister were it to be left in his hands to decide on a dissolution over the heads of his colleagues, and even against the wishes of the majority.

On many occasions the right of a minister to recommend, and of the Crown to grant, a dissolution is plain. If a ministry resigns on defeat, as did that of Lord Rosebery in 1895, or for lack of cohesion and a constructive policy, as did that of Mr. Balfour in 1905, or on the defection of a large section as in 1922, the incoming government must clearly dissolve if it is to be able to carry on business. But the more usual course is for a defeated ministry to dissolve and appeal for a popular verdict in its favour, as Edward VII would have wished Mr. Balfour to do in 1905, as Gladstone did in 1886, and Mr. R. MacDonald in 1924. The last instance is a crucial example of the exercise of the royal discretion. The Prime Minister was only the head of a minority party, which had held office with the support of the Liberals. Mr. Asquith had clearly indicated that in such a case in his view the Crown retained a full discretion as to its action when asked to dissolve, and he doubtless felt that an offer to him to form a government would have been in order, following the practice in Dominion parliaments at that time in like circumstances. But the King took the sound view, which the result of the elections amply confirmed, that the time was ripe for the decision of the issue by the people. He thus added strength to the view that only in the most remarkable circumstances is it right for the Crown to refuse reference to the electorate, who are in the ultimate issue the true holders of sovereign authority. In the same way the Crown will sanction a dissolution even soon after an election if the proposal is dictated by the desire to secure the verdict of the people on a new issue which has become urgent; thus in 1923 Mr. Baldwin asked for and received a dissolution which unexpectedly disapproved his request for a mandate to move towards protective tariffs. The dissolution of 1931, which was much resented by the Labour party, was clearly necessary after the formation of the National government, for that ministry was anxious to embark on what proved in 1932 to be a definite policy of the protection of industry, leading inevitably to further complication of the most difficult economic situation of Europe. The dissolution of 1935 was partly justified by the convenience of date, but mainly by the plea that the ministry desired to have a clear mandate as to the line of foreign policy to be adopted in view of the difficulties created by the Italian onslaught on Ethiopia in violation of the League Covenant and the Kellogg

Pact. As in the case of the election of 1900 which was ascribed to partisan motives, its critics naturally thought that the dominant motive was to capitalise the desire of the public to uphold the League of Nations in favour of the ministry, whose policy on unemployment had impaired its popularity. It is, in any case, clear that the Crown could not with any propriety have refused the request of the ministry in either case. A dissolution is also plainly proper after any great electoral change, as in 1868, 1885, 1918 and 1929.

In one case, however, it is clear that a dissolution should not be asked for; if asked for, it should not be accorded without serious consideration. If a ministry goes to the polls and is defeated, it is patent that it cannot ask for another chance to secure power. But the same principle applies, though less simply, to the case where a ministry wins a hollow victory at the polls and shortly afterwards finds itself in difficulties. Then the question of granting or refusing a dissolution is really difficult. The only effective criterion is to ask whether from the existing Commons a government can be formed which can carry on the administration for a reasonable period without itself having to ask for a dissolution. If one can be secured, then a dissolution may properly be refused. If not, then a dissolution should be accorded. It was on this point that in the Canadian case of 1926 Lord Byng went wrong. His action would have been entirely justified if Mr. Meighen had been able to carry on the government without a dissolution, and it seems clear that the Governor General acted under the belief that this would be the case. As matters actually worked out, Lord Byng was forced to give to Mr. Meighen, whose ministry had been disapproved by the Commons, the dissolution which he had refused to the undefeated Mr. King.

The question remains: In what circumstances, if any, can the King insist on a dissolution of Parliament without giving his ministers justification for resignation and the undertaking of a campaign against the monarch's unconstitutional action? The answer seems clearly to be that such action is permissible only if the ministry puts forward some vital issue on which the people were not consulted effectively at the general election. It is patent that this statement leaves abundant room for debate, but the complexity of all issues in politics negatives any simple solutions of such problems. We cannot, however, accept the doctrine that a ministry once elected is at liberty to create its own policy; we may agree that it is certainly not bound to submit to the electorate full details of its projects; it suffices to indicate clearly the

intention to deal drastically with the powers of the House of Lords without submitting the text of the Bill *in extenso*. The idea of a rigid mandate is contrary to sound principle, for Parliament has the essential function of debate, and to attempt to take this away is to lessen seriously the value of Parliament. In most cases, however, there can be comparatively little doubt as to the mandate, but the Crown can always plead for a dissolution if there be legitimate doubt. The dissolution of 1910 cannot be said to have been unconstitutionally extracted from ministers. The issues which were to be decided were so far-reaching that nothing short of dissolution would have made the will of the country clear. On the other hand, after the passing of the Parliament Bill and after the discussions in the country of Home Rule, no government could have been expected to dissolve once more on the Government of Ireland Bill. Doubtless the measure was altered considerably in its passage through the House of Commons, but all that was done was fairly within the essential nature of the measure.

It is, however, clear that, if in any case the Crown should feel unable if a Bill is passed to accord it assent, the proper course would be to intimate this to ministers and urge them to dissolve Parliament in order to secure the verdict of the country. It is, indeed, sometimes said that the royal veto of Bills is obsolete since it has not been exercised since 1707, but this statement merely means that measures have been taken in the past to secure that no Bill shall be presented for the royal assent in such a form that the Crown would refuse to accord it. Queen Victoria had no hesitation in warning Lord Derby in 1859 that she would never consent to sanction the creation of an army in India distinct from that known as the army of the Crown, and in the long run, though not at the moment, her aim was assured. Lord Halsbury on Nov. 5, 1913 made it clear, as Mr. Bonar Law had done on Jan. 24, that in his view the King had the right to refuse assent to the Government of Ireland Bill and that he should exercise that right.

### *3. The King as Guardian of the Constitution*

The controversy over the Parliament Bill and the Government of Ireland Bill suggests a problem of fundamental importance. To what degree is it incumbent on the King to safeguard the constitution from alteration not endorsed by the full assent of the people? It is one of the fundamental characteristics of the British constitution that it has no provision for a special procedure in the matter of altering the

constitution; it was this characteristic which provoked the famous declaration of De Tocqueville that there was no British constitution. The constitution can be amended by the same procedure as any other change in the law can be made. This position, of course, is merely a historical accident; it was only slowly that *Parliament* was felt to have absolute power; the emigrants to America carried with them the tradition found in Coke that there were fundamental laws which Parliament could not violate, and their belief in this doctrine was one of the causes why Britain and her American colonies parted company. Cromwell would gladly have seen provided fundamentals which might not be violated by any law. But the position has long been clear; Parliament is so sovereign that it cannot bind itself to deal with constitutional legislation in any special way. Moreover, when the vital question of enacting the Parliament Bill was raised, its sponsors refused to make any exception in its provisions of laws amending the constitution. They no less than any ordinary measure can be passed over the head of the House of Lords subject only to the power of the latter to delay enactment for rather over two years.

It was inevitable that over this Bill, which at the same time punished the Lords for its rejection of Mr. Lloyd George's budget by depriving them of all power in matters of finance so certified by the Speaker of the Commons, there should have been waged bitter warfare, and as already mentioned it is clear that the King rightly expected that the government would by the dissolution of November 1910 secure a mandate from the people. There can be no doubt that the result of the election, which left almost unchanged the figures given by the election of January 1910, proved that there was a sufficient body of opinion in the country to justify action, and in these circumstances George V's promise if necessary to create sufficient peers to carry the measure through the House of Lords, which was made public on July 21, 1911, was inevitable. The King had shown that he was fully conscious of the gravity of the changes made; he had been active in securing in July 1910 a conference of two members of each of the four parties vitally concerned in an attempt to solve the Irish imbroglio, and to avoid the necessity of further definition of the rights of the Commons. Those who criticised his giving of the pledge clearly erred; they asked their sovereign to set himself up as a partisan and to prefer his own opinion to that of the country. But the King is a guardian of the constitution only in the sense that it is his privilege and duty to secure through his power

that the constitution shall only be amended with full authority. That so drastic a measure as the Parliament Act was passed was the outcome of the vehement opposition of the House of Lords to the measures of the Liberal Government, despite its clear mandate to pass many of the Bills which the Lords rejected. It is significant that Edward VII took exception to the vehemence of the upper chamber and, vainly, strove to induce accords. The Lords, however, had been so strengthened by the influx of strong party men from the Commons, and of leaders of finance and industry, that it no longer exercised that balance of judgment which throughout the reign of Victoria prevented any serious movement to affect it. It is instructive to contrast the attitude of Queen Victoria who in 1894 was eager to force a dissolution on her ministers in order to prevent any possibility of their dealing with the Lords.

The Parliament Act, however, did not remove the difficulties in the path of the King, for the opposition to the Government of Ireland Bill evoked a bitterness of opposition which was fanned by the deliberate assertions of the leader of the opposition and the ex-Lord Chancellor that the King could and indeed should refuse his assent to the measure, if and when presented to him for assent under the provisions of the Parliament Act.<sup>1</sup> It is impossible to regard this demand as justified. The King was being urged to substitute his own opinion once more for that of the people, and to frustrate by a purely revolutionary use of power a change which, far-going as it might be, had been passed by the due procedure and with the backing of the electorate determined in the normal mode. Moreover it must be remembered that once more the King summoned a conference in a last hope to achieve accord. Under these circumstances, even if war had not intervened to bring about a compromise, there can be no doubt that the King was constitutionally bound to assent. It remains, of course, true that neither party acted wisely in the issue. Both ignored a fundamental justice in the claims of the other; the moral grounds which demanded autonomy for Southern Ireland demanded like treatment for Ulster, and the fruit of this clash of wills was destined to be the definitive destruction of a unity which might with greater wisdom have been preserved, and years of a peculiarly horrible civil war.

The net result, of course, is that the constitution is still without safeguards other than the thankless duty of the King. The most obvious menace lies in the policy of the Labour party to seek a

majority pledged to demand from the King, as the price of taking office, a promise forthwith to override by the creation of peers any opposition which may be offered to the immediate carrying out of the Labour policy of destroying the capitalist system. The method proposed contemplates legislation of a penal character to punish financiers and others who might use their financial power to counter the efforts of the ministry and legislation authorising the carrying out of the socialisation of industry, finance and agriculture by Orders in Council, power being given to the Commons by resolution to annul any judgments of the courts. It is plain that this is a rather revolutionary project. The true mode of procedure is clearly by legislation under the Parliament Act, and direct pressure on the King to force him to facilitate on the strength of a single general election such drastic measures is open to serious criticism. There is, in fact, no doubt that constitutionally the procedure suggested is unjustified; it is plain that it can only be resorted to, if the electorate deliberately approves by a substantial majority the procedure proposed. In any other event the King would plainly be entitled to demand that recourse should be had to the slower but proper action under the Parliament Act. If this request were refused, it would remain for the government to advise a dissolution in order to test the issue finally, or to resign and leave the King to dissolve Parliament on the advice of another ministry which would probably find the treatment of the sovereign by the opposition a useful electoral asset.



## *Part Five*

### THE CABINET

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"For the ground and basis of every just and free Government . . . is a general Council of ablest men, chosen by the People to consult of public affairs from time to time for the common good."

JOHN MILTON in *The Ready and Easy Way to Establish a Free Commonwealth*.

# XIII

W. IVOR JENNINGS

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## *The Cabinet\**

### *1. The Nature of the Cabinet*

The Cabinet has been described as "such of His Majesty's confidential servants as are of the Privy Council." Like some of Dr. Johnson's definitions, this raises more questions than it solves. When Lord Melbourne used the phrase in one of his letters to Queen Victoria, the editors of the *Queen's Letters* thought it necessary to insert a footnote to explain what it meant.<sup>1</sup> The nature of the Cabinet is more easily explained by analogy than by definition. It is the Board of Directors for Great Britain and all those parts of the British Empire which do not possess self-government. It is said to be a body of servants of the Crown because, usually, its members hold office under the Crown, though, as has been explained . . . members without portfolio are not uncommon. They are said to be confidential servants because they determine the main issues of the "King's" policy. They belong to the Privy Council because, historically, the Cabinet is a private meeting of those Privy Councillors in whom the King has particular "confidence" for the time being.

The definition is, in short, a relic of history. In substance, the Cabinet is the directing body of the national policy. Consisting of the principal leaders of the party in power, it is able to forward that policy by reason of its control of the House of Commons. Consisting, too, of the heads of the more important Government departments, it is able to forward its policy by laying down the principles to be followed by the central administrative machine. Their service under the Crown is the legal explanation of the political fact that ministers hold important Government offices. Membership of the Privy Council

\*W. Ivor Jennings, *Cabinet Government* (Cambridge, 1937). Reprinted by kind permission of the author and the publishers.

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, I, p. 285.

is a historical survival. It is said that the Privy Councillor's oath restrains those who take it from publishing information obtained in the service of the Crown. It is difficult to believe that it is the oath alone and not the weight of tradition, the insistence of the Prime Minister, or the disapproval of colleagues, that makes the secrecy of the British Cabinet more effective than is common in most governmental systems. In spite of the oath, close relations between ministers and the press have not been unknown at various times in the history of the Cabinet. The Official Secrets Acts now provide legal penalties for the disclosure of Cabinet secrets.

The Cabinet consists of some twenty ministers; most of whom are party leaders in the House of Commons, the others being supporters of the same party in the House of Lords. The increase in the functions of the State has necessitated an increase in the number of departments exercising important functions, and thus of the number of Cabinet ministers. During most of the nineteenth century, the Cabinet contained from twelve to fifteen members. Disraeli's Cabinet of 1874 contained twelve members only. He excluded, for instance, the President of the Board of Trade. The experiment was not a success. For one of the most important legislative proposals was a Merchant Shipping Bill which was promoted by the President and withdrawn by the Cabinet. The session was not propitious for the Government, and Sir Stafford Northcote said that the Government's misfortunes were largely due to the fact that the President had not been able "to make himself disagreeable in Cabinet."<sup>2</sup> It may indeed be said that Peel's Cabinet of thirteen in 1841 was the smallest possible even at that date. During the present century the number of Secretaries of State has been increased from five to eight. The Department of Education was separated from the Privy Council in 1899 and its functions have immensely increased. The Ministry of Labour possesses functions which are almost entirely of recent creation. The Board of Agriculture and Fisheries has been converted into a Ministry with substantially increased functions.<sup>3</sup> The Local Government Board has become the Ministry of Health, again with largely increased functions. The League of Nations has so increased the work of the Foreign Office that the Foreign Secretary usually needs assistance, preferably from a Cabinet minister. Above all, the work of each department, whether new or

<sup>2</sup> *Life of Lord Norton*, p. 220.

<sup>3</sup> It was practically laid down in 1895 that the President of the Board of Agriculture should be in the Cabinet; cf. Fitzroy, *Memoirs*, I, p. 236.

old, has grown so much that, in the first place, the heads of departments have less time to devote to general policy, and, in the second place, the matters submitted to the Cabinet have become much more numerous. In consequence, informal discussions outside the Cabinet are much more frequent, and inside the Cabinet much work has had to be delegated to committees. Cabinet ministers who are not overburdened with departmental duties, such as the Lord President of the Council, the Lord Privy Seal, and sometimes ministers without portfolio may assist in this work. The Cabinet of 1936 contains twenty-one members.

Though the Cabinet is chosen when the Government is formed, and though certain offices are recognised as carrying Cabinet rank, there is nothing to prevent the Prime Minister from promoting a junior minister to the Cabinet without changing his office. Thus, Sir Rufus Isaacs and Sir Douglas Hogg, while holding the office of Attorney-General, were brought into the Cabinet; and Mr. Herbert Morrison was similarly promoted while Minister of Transport. Also, the Prime Minister may request the attendance of any minister to give advice on a particular matter. For instance, the Attorney-General would be summoned if some legal question were involved and the Lord Chancellor desired assistance; the Minister of Transport would be summoned if any of his departmental business required his attendance; the Secretary of Mines might be asked for his advice on a coal-mining dispute.

The Cabinet consists of party leaders with Parliamentary experience. For the most part, they will have borne the burden of opposition, itself a training for government. Generally, they have had experience of office in previous Governments. Occasionally, as in 1852 (when Derby's "who? who?" ministry of untried men came into office), in 1905 (when the Liberals came in after eleven years of opposition), and in 1924 (when the Labour Party first secured office), a large proportion of members inexperienced in government has entered the Cabinet. Generally, however, it is energy and not experience that is lacking. Sometimes, indeed, one is reminded of the reply of M. Clemenceau, at the age of eighty, to the question why he was not in M. Briand's Government. "Je suis trop jeune," he said. Lord Derby, the Prime Minister, once remarked that he was often urged to bring in "new blood," but that, as often as he followed this advice, he heard complaints about "raw recruits."

## 2. Functions

The main functions of the Cabinet were set out in the Report of the Machinery of Government Committee<sup>4</sup> (1918) as:

(a) the final determination of the policy to be submitted to Parliament;

(b) the supreme control of the national executive in accordance with the policy prescribed by Parliament; and

(c) the continuous co-ordination and delimitation of the authorities of the several Departments of State.

This statement rightly makes no distinction between legislation and administration. In the modern State, most legislation is directed towards the creation or modification of administrative powers. The importance of private law cannot be denied; and one of the purposes of a constitution is to provide a means by which disputes as to private rights can be settled. It is, further, one of the functions of government to provide for modifications in the judicial system and the law which it administers as between subject and subject. In most countries it is a principal task of the Ministry of Justice to secure improvements in the civil law and its administration. Even in England, where there is no such Ministry, the Lord Chancellor has as one of his numerous duties the supervision of the civil law. But in most highly developed communities, and above all in Great Britain, the main function of government is the provision of services, including the maintenance of external relations and the defence of the country, for the welfare of the people. Legislation is thus the handmaid of administration, and Parliament's legislative powers are part of the means by which it controls administration.

Whether legislation is required to carry out an administrative policy is a technical question. The Cabinet has to decide on the policy. The technician explains that to carry it out legislation is required. Since Parliamentary time is limited and Parliamentary control over an alteration of law is far greater than it is over an alteration of administration within the law, this fact has to be taken into account in determining the policy.<sup>5</sup> But otherwise no distinction is made between a policy that requires legislation and a policy that does not. The Cabinet is not an "executive" instrument in the sense that it possesses

<sup>4</sup> Report of the Machinery of Government Committee, C. 9230, 1918, p. 5.

<sup>5</sup> At the beginning of each session the Home Affairs Committee of the Cabinet discusses what Bills shall be promoted in the session. Of the Bills proposed (frequently enough for a whole Parliament) at least ninety per cent. are "departmental."

any legal powers; it is a policy-formulating body. When it has determined on a policy, the appropriate department carries it out, either by administrative action within the law or by drafting a Bill to be submitted to Parliament so as to change the law.

The Cabinet is a general controlling body. It usually meets once a week only and for two hours. Many of its members are departmental ministers, with important departmental duties to perform. It neither desires nor is able to deal with all the numerous details of government. It expects a minister to take all decisions which are not of real political importance. Every minister must therefore exercise his own discretion as to what matters arising in his department ought to receive Cabinet sanction.\* The minister who refers too much is weak; he who refers too little is dangerous. Lord Palmerston was among the latter. While he was Foreign Secretary his colleagues went in perpetual fear of trouble. A revealing anecdote by Lord Clarendon suggests that, as Prime Minister, he suffered from the same belief in the soundness of his judgment. "I remember once his agreeing with me that Vera Cruz ought to be blockaded, and desiring me to write accordingly in the Queen's name to the Admiralty. I said, 'Surely not without bringing it before the Cabinet?'—'Oh, ah! the Cabinet,' was his answer, 'very well, call them then, if you think it necessary'."† Mr. Joseph Chamberlain, as Colonial Secretary, was inclined to be Palmerstonian.‡

Certain matters are, however, regarded as being normally outside the Cabinet's competence. Lord Oxford and Asquith said that, speaking generally, the exercise of the prerogative of mercy, the personnel of the Cabinet, and the making of appointments, are not discussed in Cabinet.§ The question of the reprieve of Sir Roger Casement in 1916 was brought before the Cabinet.¶ But normally the exercise of the prerogative of mercy is left to the Home Secretary; the function is as "judicial" a function as any that goes by that name. The personnel of the Cabinet, on the other hand, has frequently been discussed by the Cabinet in the past, though usually in exceptional circumstances. Other appointments are still regarded primarily as matters of "patronage" which are left to the Prime Minister for the time being, or to a minister in consultation with the Prime Minister, or to a minister acting on his own responsibility. But it is clear that, where a real

\* See Gladstone, *Gleanings*, I, p. 242; and Mr. Gladstone's statement reported in *Life of Sir Edward Cook*, pp. 148-9.

† *Life of the Earl of Clarendon*, II, p. 240.

‡ For a good example see *Life of Joseph Chamberlain*, II, pp. 440-41.

§ Oxford and Asquith, *Fifty Years of Parliament*, II, p. 194.

¶ *Life of Randall Davidson*, II, p. 789.

political issue is involved, Cabinet authority would be obtained. Mr. Gladstone asserted that the appointment of a Viceroy had "more than once" been referred to the Cabinet;<sup>12</sup> and Lord Oxford and Asquith said that in his own Cabinet the appointment of a Viceroy was considered by the Cabinet.<sup>13</sup> Also, it is conceivable that if a minister insisted on appointing to a superior office, such as that of a Permanent Under-Secretary, without the consent of the Prime Minister, the latter might bring the matter before the Cabinet. No instance is known.

Another matter which is rarely, if ever, discussed in Cabinet is the conferment of honours.<sup>14</sup> The Queen assumed that the question of granting a dukedom to the Marquis of Lansdowne, on his retirement from the Viceroyalty of India, had been considered by the Cabinet in 1894. Accordingly, she protested, "as the fountain of honour," that such matters are not discussed by ministers.<sup>15</sup> Mr. Gladstone replied that the Cabinet might be consulted as to both the conduct and the appointment of a Viceroy and added:

Mr. Gladstone has never known a case where the Cabinet have interfered in a question of honour purely titular, or honour connected with an office lying beyond the established circle of political administration. But, in the public mind, and in ordinary practice, the Cabinet is viewed as the seat of ultimate responsibility; and, in view of the precedents he has quoted [relating only to conduct and appointment], Mr. Gladstone owns himself unable to exclude from all concern in the honours bestowed upon a Viceroy those who have been and may be consulted upon his retirement, and who are ultimately responsible for his administrative acts. It is true indeed, as your Majesty observes, that the Sovereign is the fountain of honour; but it is also true that the Sovereign is the fountain of law. That Mr. Gladstone did not consult the Cabinet (to which every minister is as a rule entitled to appeal in matters concerning him) was due to the absence of Lord Kimberley [Secretary of State for India] but also to a sentiment of deference to your Majesty.<sup>16</sup>

<sup>12</sup> *Letters of Queen Victoria*, 3rd Series, II, p. 349; for an example see *ibid.* 2nd Series, III, p. 271.

<sup>13</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 194. The appointment of Mr. Sinha to the Governor-General's Council was approved by the Cabinet in 1909: Morley, *Recollections*, II, p. 301.

<sup>14</sup> For Queen Victoria's protest against consideration by the Cabinet of the expenditure of his income by the Prince of Wales, see *Letters of Queen Victoria*, 2nd Series, I, p. 80. Normally questions referred to the Attorney-General as to the bringing of prosecutions are not brought before the Cabinet: see the case of Mr. J. H. Thomas, and Sir John Simon's statement thereon: 313 H.C. Deb. 5 s., 39; and see the debate on the Campbell case, 177 H.C. Deb. 5 s., 581-704; but plenty of precedents were quoted in that debate: see especially the speech of the Attorney-General: *ibid.* 596-619. See *post*, p. 240.

<sup>15</sup> "The Prime Minister may consult anybody he pleases, and very often does, but the idea that he should bring before the Cabinet the question of honours is one utterly foreign to our whole constitutional procedure." Marquess Curzon of Kedleston in the House of Lords, 7th March 1923: 53 H.L. Deb. 5 s., 286-7.

<sup>16</sup> *Letters of Queen Victoria*, 3rd Series, II, p. 347.

<sup>17</sup> *Ibid.* 3rd Series, II, pp. 349-50.

Mr. Gladstone, it may be suggested, laid down the correct doctrine in this passage. The Cabinet is regarded as having, and accepts, ultimate responsibility for all political acts. If an act of a minister involves, or may involve, political issues of some magnitude, he ought to bring it before the Cabinet. Normally, the prerogative of mercy involves the exercise of a judicial function. Yet it is not impossible to imagine circumstances in which it would be of major political importance. The pardon of the perpetrator of a political crime, such as political assassination, treason,<sup>17</sup> riot, unlawful assembly, or seditious libel, might involve political questions of the first order of magnitude. It would not be, in substance, different from the release of Mr. Parnell in 1885. A somewhat similar question is raised by the discretion of the Attorney-General, through his control of the Director of Public Prosecutions, as to public prosecutions. It is unthinkable that the desirability or otherwise of such a prosecution should in ordinary circumstances be brought before the Cabinet. But it is clear that a prosecution for a political offence may raise political issues. The breadth of the offence of sedition, for example, is such that the law is much stricter than the practice.<sup>18</sup> Accordingly, it is not uncommon for the question of prosecution to be considered by the Cabinet. Thus, the War Cabinet appears to have given instructions to Sir Frederick Smith (afterwards Earl of Birkenhead) as to certain prosecutions, though Sir Frederick protested.<sup>19</sup> In 1919 Sir Gordon Hewart, now Lord Chief Justice, consulted the Home Secretary, who brought the matter before the Cabinet, as to a prosecution for sedition.<sup>20</sup> In 1924 Sir Patrick Hastings gave instructions for a prosecution against the editor of *The Workers' Weekly* for an offence under the Incitement to Mutiny Act. Questions were asked in the House of Commons, the Prime Minister intervened, the question was discussed by the Cabinet, and thereupon the Attorney-General gave instructions to ask the magistrate's leave to withdraw the prosecution. These proceedings led to the moving of a vote of censure in the House of Commons. An amendment for a Select Committee, moved on behalf of the Liberal Party, was passed against the Labour Government.<sup>21</sup> The Government

<sup>17</sup> As in 1916, when the proposed reprieve of Sir R. Casement, convicted of treason for inciting Irish soldiers to fight on the German side, was brought before the Cabinet: *Life of Randall Davidson*, II, p. 789. The exercise of the prerogative would have had political repercussions.

<sup>18</sup> See Jennings, *The Law and the Constitution*, pp. 237-8.

<sup>19</sup> 177 H.C. Deb. 5 s., 614-5.

<sup>20</sup> *Ibid.* 598-9.

<sup>21</sup> See the debate: 177 H.C. Deb. 5 s., 581-704.



thereupon advised a dissolution and was defeated at the ensuing general election. The Attorney-General and the Prime Minister defended themselves on the ground that a political prosecution may involve political questions. "Where the public interest may conflict with the strict exercise of his duty," it is, said Sir Patrick Hastings, not only the right but the duty of the Attorney-General to consult the Cabinet.<sup>22</sup> "Every Law Officer who is undertaking a prosecution in the interests of the State must possess himself not only of guidance on technical law," said the Prime Minister, "but must possess himself of guidance on this question, whether if a prosecution is instituted the effect of the prosecution will be harmful or beneficial to the State in whose interests it has been undertaken."<sup>23</sup> The Liberal members did not specifically dissent from these propositions, but contented themselves with a demand for inquiry. Whatever be the merits of their application to Mr. Campbell's case, it seems that the propositions themselves cannot seriously be controverted.

Again, most appointments are determined by the qualifications of the available personnel. Yet certain key positions like the Viceroyalty of India, or the Permanent Secretaryship to the Treasury, or the office of Chief Economic Adviser, might be, in some political conditions, major political questions.<sup>24</sup> Similarly, though the grant of honours is too unimportant a matter to occupy the time of the Cabinet, it is conceivable that with a Labour majority in the House of Commons it might assume larger proportions.

The annual Budget statement occupies a peculiar position. Though of major political importance, and therefore always brought before the Cabinet, it is not circulated, but is disclosed orally to the Cabinet a few days before it is made in the House of Commons.<sup>25</sup> It therefore does not follow the usual procedure whereby the principles are discussed in Cabinet, the details worked out in committee, and the full proposals circulated and debated. The reason is the fundamental importance of secrecy<sup>26</sup>—though it may be doubted whether the need for secrecy is any greater in this case than in many other matters—

<sup>22</sup> 177 H.C. Deb. 5 s., 599.

<sup>23</sup> *Ibid.* 629.

<sup>24</sup> In 1918 the resignation of Major-General Sir Hugh Trenchard was considered by the War Cabinet, and the Secretary of State did not accept the resignation until it had been so considered: 105 H.C. Deb. 5 s., 972.

<sup>25</sup> See the evidence of Sir Maurice Hankey before the Tribunal of Inquiry in 1936: Budget Disclosure Inquiry (1936), Minutes of Evidence, p. 25. The average period is four or five days, but it was twelve days in 1933 and twenty-one days in 1936, in both cases because of the Easter recess.

<sup>26</sup> Snowden, *Autobiography*, II, p. 617.

but its effect is to give the Chancellor of the Exchequer a much greater personal control over his Budget than is the case with most other departmental proposals. The rule is in any case one of convenience only, and the Cabinet may ask for longer notice and more effective discussion. In 1860 the Cabinet asked for nearly a month's notice of Mr. Gladstone's famous Budget of that year. Owing to the fact that the financial year had not then closed, Mr. Gladstone was unable to agree, but he gave a week's notice.<sup>27</sup> The Budget must be distinguished from the Estimates. Occasions on which disputes over estimates have been brought before the Cabinet are frequent. As a result of Cabinet decisions on such disputes, Lord Randolph Churchill resigned in 1886 and Mr. Gladstone in 1894. Again, it is inconceivable that fundamental changes will be made without the Prime Minister's prior consent. Further, the Cabinet can always insist on modifications after the Budget statement has been made. (They can be camouflaged as "concessions" to public or Parliamentary opinion.) Finally, the Cabinet can overthrow a budget altogether if it is prepared to risk the resignation of the Chancellor of the Exchequer.

Another matter which is now never discussed in Cabinet is the exercise of the prerogative of dissolving Parliament. This is, however, a post-war development; and if the Prime Minister desires the advice of the Cabinet there is nothing to prevent him from raising the question.

It is not only the right of a minister to consult the Cabinet on major matters. It is his duty to do so. Sometimes, however, the urgency of the matter makes prior consultation impossible. In such circumstances, the Prime Minister's authorisation is enough. Examples have already been cited. The situation most frequently occurs in respect of foreign affairs, where most matters are of political importance and yet have frequently to be decided out of hand. Sometimes, indeed, it is necessary for the Foreign Secretary to refuse to give an answer until the Cabinet, and occasionally Parliament also, have been consulted. For instance, Sir Edward Grey in 1906 refused to give an assurance that if France were attacked by Germany Great Britain would support France, and said that such an assurance would require both Cabinet and Parliamentary authority.<sup>28</sup>

The difficulty that most Foreign Office action is of political importance, but that prior consultation is not always possible, is overcome by

<sup>27</sup> Guedalla, *Gladstone and Palmerston*, p. 162.

<sup>28</sup> *Life of Sir Henry Campbell-Bannerman*, II, p. 255.

circulating important Foreign Office telegrams and despatches daily to each member of the Cabinet, whose members can then raise any question they think fit—provided that they read the daily print.<sup>29</sup> The Duke of Argyll emphasised the duty of the Foreign Secretary in 1891.<sup>30</sup> Nevertheless, some Foreign Secretaries have been inclined towards secretiveness. Lord Palmerston frequently failed to consult not only the Cabinet, but also the Prime Minister and the Queen. In 1886, when the Queen and Lord Salisbury were in alliance against the Liberal Party, Lord Salisbury advised the Queen that Lord Rosebery ought to bring as little as possible before the Cabinet, and to settle everything with the Queen and Mr. Gladstone, as nothing was ever settled satisfactorily in the Cabinet.<sup>31</sup> The Queen advised Lord Rosebery accordingly, using almost Lord Salisbury's own words.<sup>32</sup> The Queen was not too much a partisan, and was too much an autocrat, not to consider that what was sauce for a Liberal was also sauce for a Conservative; and later in the same year she reminded Lord Salisbury, now both Prime Minister and Foreign Secretary, of his advice.<sup>33</sup> Lord Salisbury agreed, but pointed out that it was necessary to discuss the Bulgarian question in the Cabinet because some of the members desired to criticise a Foreign Office telegram.<sup>34</sup>

Lord Rosebery, at least, seemed to agree with Lord Salisbury's advice. In 1893 he extended British influence in Uganda without Cabinet sanction, and marked the document in question "not to be printed." This fact was discovered by Sir William Harcourt nine months later, and he wrote: "The claim therefore is that the Foreign Secretary may set aside the judgment of the Prime Minister and the Cabinet, and give without their knowledge instructions of the gravest consequence which are contrary to their opinion. I believe such a pretension to be absolutely inconsistent with the traditions of English administration, and it was finally condemned in the well-known case of Lord Palmerston in 1851."<sup>35</sup>

Nevertheless, when Lord Rosebery was Prime Minister in 1895, he refused to accede to Sir William Harcourt's request, which was supported by Lord Kimberley, the Foreign Secretary, to submit the Nicar-

<sup>29</sup> Important telegrams and despatches are also circulated by the Dominions Office and the Colonial Office.

<sup>30</sup> *Life of Lord Granville*, II, pp. 506-7, quoting a letter by the Duke to *The Times*, April 16th, 1891.

<sup>31</sup> *Letters of Queen Victoria*, 3rd Series, I, p. 45.

<sup>32</sup> *Ibid.* 3rd Series, I, p. 48.

<sup>33</sup> *Ibid.* 3rd Series, I, p. 211.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Life of Sir William Harcourt*, II, pp. 315-16; see also *ibid.* II, p. 319.

aguan dispute to the Cabinet, alleging that it was impossible to collect the Cabinet together. Sir William Harcourt said that "the refusal of Lord Rosebery to reserve a question for the Cabinet on the request of the Foreign Secretary and the remonstrance of the leader of the House of Commons is, according to my experience, without precedent."<sup>29</sup>

Mr. Lloyd George alleges that from 1906 to 1914 "there was a reticence and a secrecy which practically ruled out three-fourths of the Cabinet from the chance of making any genuine contribution to the momentous questions then impending (in foreign policy). . . . Direct questions were answered with civility, but were not encouraged. . . . We were not privileged to know any more of the essential facts than those which the ordinary newspaper readers could gather."<sup>30</sup>

A comparison of accounts does not suggest that there was any deliberate concealment. Mr. Lloyd George's impression was probably derived from Sir Edward Grey's excessive departmentalism and his lack of interest in internal questions. There is as yet no adequate evidence on Mr. Lloyd George's assertion that there was deliberate suppression and distortion of information by the military authorities later in the war. Mr. Lloyd George says that Sir Henry Wilson, at Sir Douglas Haig's instigation, misled the Cabinet on the subject of the morale of the French troops and suppressed the facts that the French generals were against the Passchendaele plan, that the battlefield was unsuitable for the plan, and that some of the British generals were against the plan.<sup>31</sup> Later on, it was not told that the general actually fighting advised stopping the offensive and was not informed of the defeat at Cambrai.<sup>32</sup>

### 3. *The Cabinet Secretariat*

Until 1916 the business of the Cabinet was run on lines which would seem peculiar to the new generation of ministers. There was no Cabinet Office and no Secretary. There was, therefore, no formal agenda. A minister who desired to raise a matter for decision circulated a memorandum if he thought fit, and informed the Prime Minister, whether or not a memorandum had been circulated, that he proposed to bring a certain matter before the Cabinet. The Prime Minister was thus able to compile an informal agenda. As a rule the meeting began with any items of foreign affairs which the Foreign

<sup>29</sup> *Ibid.* II, pp. 331-2.

<sup>30</sup> Lloyd George, *War Memoirs*, I, pp. 46-51.

<sup>31</sup> Lloyd George, *War Memoirs*, IV, pp. 2140-48, 2191-2204.

<sup>32</sup> *Ibid.* IV, pp. 2216, 2257.

Secretary desired to raise, or which any minister desired to bring up in consequence of the telegrams and despatches which had been circulated. Then the Prime Minister would call in turn upon those ministers who had indicated to him their desire to raise questions of home or imperial affairs. There was, therefore, some order in the discussion. Indeed, it was rare for a minister to raise a matter without informing the Prime Minister beforehand. For if a minister, finding that time was being taken over other subjects, tried to "jump a claim" or interpose some item which the Prime Minister had not put down, the Prime Minister would gently suggest that the question might be postponed until certain other questions had been disposed of. Then, while the discussion was proceeding, he might pass a note suggesting that perhaps it would be well to postpone the matter until next time, when it could be taken earlier in the sitting and perhaps discussed with that close attention and at that length that its importance obviously warranted.

The discussion on any item having terminated, the Prime Minister would make a note in order to convey the result to the Sovereign, and the Cabinet would proceed to the next business. The minister concerned would then indicate to his department what the decision was—that is, if he could remember it. With some Prime Ministers, the Cabinet was never in doubt what the decision was. Mr. Balfour, for instance, always made the point abundantly clear. With other Prime Ministers, however, the Cabinet might break up convinced that it had come to a conclusion, but not knowing what that conclusion was. While Mr. Asquith was Prime Minister, for instance, it was quite common for a minister's private secretary to telephone to the Prime Minister's private secretary to ask what the decision had been. For there was no record of the Cabinet's decision save the letter sent to the King, of which the Prime Minister would keep a copy.

This unbusinesslike system completely broke down under the stress of war. One of the first acts of Mr. Lloyd George was to institute a Cabinet Secretariat to organise the business of the War Cabinet. This Secretariat was in fact the Secretariat of the Committee of Imperial Defence. When the former War Committee was reconstituted by Mr. Balfour in 1903, a Foreign Office clerk was assigned to keep the minutes. With the increase of the Committee's work and the setting up of sub-committees under Sir Henry Campbell-Bannerman, the Secretariat necessarily increased both in size and in importance. It not only prepared the agenda and kept the minutes of the Committee

and its sub-committees, but also acted as the link connecting the service departments, the Foreign Office, and the other departments concerned with the development of war plans. Those plans were put into execution on the outbreak of war. The War Council set up in November, 1914, was developed out of the Committee and used its Secretariat. It was replaced by the Dardanelles Committee in 1915, and the functions of the latter were gradually extended so that it became the War Committee. It used the same Secretariat, and "Colonel Hankey [the Secretary] sat between the Prime Minister and the door, ready to attend to either, as might be required."<sup>a</sup>

On the formation of the War Cabinet in 1916, Mr. Lloyd George attached the War Committee's Secretariat to the Cabinet. Thus, the Secretariat of the Committee of Imperial Defence became the Secretariat of the Cabinet; and Colonel (now Sir) Maurice Hankey, the Secretary to the Committee, became the first Secretary to the Cabinet.<sup>b</sup> The new department appeared in the estimates in 1917 (on a supplementary estimate). The Machinery of Government Committee in 1918 recommended that the Secretariat should be permanently maintained "for the purpose of collecting and putting into shape [the Cabinet] agenda, of providing the information and the material necessary for its deliberations, and of drawing up the results for communication to the departments concerned."<sup>c</sup> In 1922 Mr. Bonar Law regarded it as one of the undesirable relics of the War Cabinet and proposed to abolish it. Its utility had, however, been so clearly proved that it was decided to continue it, though its functions were narrowly defined. The Cabinet Secretariat and the Secretariat of the Committee of Imperial Defence are now administratively distinct, though there are important elements of contact. Sir Maurice Hankey is not only Secretary to the Cabinet, but also Secretary to the Committee of Imperial Defence and Clerk of the Privy Council. His private secretary and the subordinate staff serve both the Cabinet and the Committee of Imperial Defence. But the Deputy Secretary and a Principal seconded from the Treasury deal only with the business of the Cabinet and its Committees.

In the War Cabinet, the Secretary and two Assistant Secretaries were usually present. This practice has since been altered and only the Secretary or, in his absence, the Deputy-Secretary is present. During the war, also, the Cabinet Office transmitted to the depart-

<sup>a</sup> Clement Jones, *Empire Review*, XIX, p. 1410.

<sup>b</sup> Lloyd George, *War Memoirs*, III, pp. 1080, 1081.

<sup>c</sup> Report of the Machinery of Government Committee, p. 6.

ments the decisions of the War Cabinet.<sup>43</sup> This practice too has been altered; each minister now receives only the draft Cabinet Conclusion and it is his responsibility to instruct his department as to the decisions taken, in so far as they need departmental action. Where a decision affects a department whose minister is not in the Cabinet, an extract of the Conclusions is sent to that minister in respect of any matter affecting his department.

The functions of the Cabinet Office are, therefore:

(a) to circulate the memoranda and other documents required for the business of the Cabinet and its committees;

(b) to compile under the direction of the Prime Minister the agenda of the Cabinet and, under the direction of the chairman, the agenda of a Cabinet committee;

(c) to issue summons of meetings of the Cabinet and its committees;

(d) to take down and circulate the Conclusions of the Cabinet and its committees and to prepare the reports of Cabinet committees; and

(e) to keep, subject to the instructions of the Cabinet, the Cabinet papers and conclusions.

#### *4. The Cabinet Agenda*

In the eighteenth century it was the practice of any minister who desired to lay a matter before the Cabinet to summon it for that purpose. The regularisation of business made for regular Cabinets, and for many years the Cabinet has met weekly during the Parliamentary session. Additional meetings are summoned by the Prime Minister when they are necessary. The question of the right of the Prime Minister to refuse to summon a Cabinet is perhaps of some theoretical interest. As a matter of practice, it never arises. If a matter is of great urgency, it is inconceivable that the Prime Minister will not recognise it as such. If a dispute has arisen between the Prime Minister and a minister, that alone is a question of urgency upon which the Prime Minister himself will desire an immediate decision.

Normally, a proposal is submitted to the Cabinet by the minister concerned in the form of a written memorandum. Copies of these memoranda are reproduced, usually by the departments, but occasionally by the Cabinet Office, and are circulated by that Office. If a memorandum is of any considerable length it generally con-

<sup>43</sup> See *The War Cabinet: Report for the Year 1917*, C. 9005/1918, pp. 3-4. For a defence of this practice, see 155 H.C. Deb. 5's., 223.

cludes with a summary prepared in order that ministers who are not specially conversant with the subject may readily inform themselves of what is proposed. But the insistence on memoranda, which is an elementary rule of business, does not prevent an item being placed, with the Prime Minister's approval, on the agenda without a memorandum. Moreover, it is of course open to the Prime Minister to allow questions not mentioned on the agenda to be raised as matters of urgency.

It is a Cabinet instruction, hitherto renewed by each new Cabinet, that memoranda, draft Bills and other constituents of the Cabinet agenda are not to be circulated until after their subject-matter has been fully examined between the department from which they emanate, the Treasury, the Law Officers where contentious Bills are involved," and any other departments concerned. Great emphasis is placed on this requirement, since it secures that every question has been fully examined from all relevant points of view before the Cabinet is asked to take a decision. In the case of a Bill, it is laid down that the covering memorandum must state that this rule has been followed, though it appears that this is not always done. In the case of consultation other than with the Treasury, the Cabinet Office assumes that the Cabinet instruction has been complied with. But, as a result of attempts made in 1919 to secure proper financial control, it is laid down that no proposal involving questions of finance shall be circulated until the sanction of the Chancellor of the Exchequer has been obtained. Strictly speaking, no doubt, there is no veto. For, except in very exceptional circumstances, it is unlikely that the Chancellor of the Exchequer would refuse to allow a proposal to go forward, no matter how great his opposition. What no doubt usually happens in practice is that he asks the minister not to circulate his memorandum until the Treasury has been able to prepare for circulation a memorandum pointing out the financial implications of the proposal and stating the Chancellor's objections, if any, to the scheme on financial grounds. It is extremely unlikely that a proposal summarily objected to by the Chancellor and the Prime Minister would find favour with the Cabinet. In January, 1919, Mr. Churchill, as Secretary of State for War, concocted a scheme for the armies of occupation with Field-Marshal Sir Henry Wilson. It was based on the continuance of

"It is believed that this requirement and indeed much of the present procedure was originated by the Labour Cabinet in 1924 as a result of complaints by Sir Patrick Hastings, then Attorney-General. When an important and contentious Bill is on the agenda, the Attorney-General may be summoned,



compulsory service, and was strongly objected to by Mr. Lloyd George, who was in Paris. Mr. Lloyd George refused to have it brought before the War Cabinet in his absence, and Mr. Bonar Law, who presided over the Cabinet, refused to allow a decision to be taken. But next day Churchill, Wilson and Haig saw Lloyd George, who then allowed it to be brought before the Cabinet.<sup>45</sup>

The consent of the Chancellor of the Exchequer and of the Prime Minister having been obtained, the Cabinet Office circulates the memorandum to the members of the Cabinet. Normally, the necessary copies are provided by the department concerned; but where the department has no facilities for reproduction, the Cabinet Office undertakes to provide the necessary number. Subject to reference, in case of doubt, to the Prime Minister or to the minister from whom the document is received, the Secretary has a discretion to circulate papers to ministers outside the Cabinet whose Departments are affected. Also, a minister may ask for additional copies.

It is an instruction to the Secretary, subject to the power of the Prime Minister to waive the requirement, that no proposal shall be placed upon the Cabinet agenda until a period of five days has elapsed since the circulation of the appropriate memoranda.<sup>46</sup> These memoranda are circulated daily, and more often if necessary. The agenda itself is compiled a few days before the meeting, and when approved by the Prime Minister is circulated to all Cabinet ministers the same evening. The order of the agenda depends in part upon the traditional order of business. That is, subject to any special matters to be raised by the Secretary of State for Foreign Affairs, the first item is "Foreign Affairs (if any)." This enables the Secretary of State to give any general explanation that he thinks fit, and enables any minister to call attention to any matter of importance set out in the Foreign Office despatches and telegrams of the week. The agenda is, however, invariably submitted to the Prime Minister, and he can change the order, or direct the deletion of items, or add new items. The agenda, in short, is as much under the control of the Prime Minister as it was when there was no formal circulated agenda. Each item refers, however, to the relevant Cabinet papers. Thus, a minister's private secretary can gather together the necessary documents, attach them to the agenda, and so enable the minister to prepare himself for the Cabinet discussions.

<sup>45</sup> *Diaries of Field Marshal Sir Henry Wilson*, II, pp. 165-66.

<sup>46</sup> This rule appears to have been laid down in 1924.

If after the agenda has been circulated questions of urgency arise, the Prime Minister can always authorise a supplementary agenda paper. This is circulated as quickly as possible and is, if necessary, laid on the table. It is the recognised right of a minister to have circulated as a Cabinet document any remarks which he may desire to make on a Cabinet proposal.<sup>41</sup> When Mr. Balfour circulated his memorandum on fiscal reform in 1903, for instance, Mr. Ritchie and Lord Balfour of Burleigh circulated reasoned statements against its conclusions.<sup>42</sup> But it appears that normally, and apart from departmental memoranda, ministers may prefer to make orally such statements on general policy. It has to be remembered, in this connection, that the Cabinet minutes will contain a reference to the memorandum and the memorandum itself will be preserved in the Cabinet Office, unless the Cabinet otherwise directs. If, on the other hand, the minister states his case orally, the minutes will not as a rule indicate which minister put forward these arguments. In other words, the minister who circulates a memorandum is putting his views on record.

The items on the agenda are usually concerned with questions of departmental policy upon which the ministerial head of a department desires a Cabinet decision. Wider political questions, not of a departmental nature, would normally be raised by the Prime Minister. It is generally understood by the departments that their documents should be as complete as possible, and should contain the various arguments in favour of the proposal and the criticisms which might be brought against it. But, probably, the purpose of this rule is effectively secured by the requirement, already mentioned, that no proposal should be circulated until it has been submitted to the interested departments, especially the Treasury in respect of financial matters, or to the Law Officers in respect of legislative proposals. In any case, the Cabinet does not like to be confronted with technical inter-departmental questions of minor importance. It considers that the ministers concerned should themselves settle such matters.

### 5. *Procedure in Cabinet*

When Lord Balfour became Lord President of the Council in 1925 he told Mr. Baldwin that Cabinet business was three or four times as great as when he first took Cabinet office in 1886. The amount of business necessarily depends on political conditions. There have been

<sup>41</sup> *Life of the Eighth Duke of Devonshire*, II, p. 339.

<sup>42</sup> *Ibid.*

periods of overwhelming pressure, as between 1914 and 1919, between 1930 and 1932, and since 1935. During the intervals, the Cabinet as such has not been heavily overburdened. In 1934 there were less than fifty meetings, though this was below the average, which may be taken to be something between sixty and seventy a year. Certainly the length of Cabinet meetings has not expanded in proportion to the increase in business. For this there are several reasons. The first is that Cabinet instructions since 1919 have made clear, and have repeated at intervals, that no question is to be brought before the Cabinet until it has been submitted to all the departments concerned. Inter-departmental questions must therefore be settled inter-departmentally so far as is possible. The institution of the Cabinet Secretariat, and particularly the practice of securing the consent of the Chancellor of the Exchequer before a proposal is circulated, have enabled this rule to be effectively enforced. Secondly, the practice of consultation between leading ministers<sup>99</sup> has enabled agreement to be reached before it becomes a matter of Cabinet debate.<sup>100</sup> This development is neither so recent nor so important as is commonly alleged. Thirdly, the better distribution of memoranda through the Cabinet Office and insistence upon the rule that, so far as possible, every proposal should be accompanied by a memorandum, and every memorandum circulated for five days before it is discussed, together with the circulation of a formal agenda, has enabled ministers to come to a meeting much better prepared. Fourthly, the Cabinet now makes much greater use of committees, and in particular the institution of the Home Affairs Committee has relieved the Cabinet of some of its former work of a technical kind on Government Bills. Finally, the Committee of Imperial Defence has relieved the Cabinet of the necessity for discussing problems of defence in detail except so far as they involve questions of principle. That Committee, as will be explained in the next chapter, has no executive powers; but when a question has been fully discussed by all the ministers really concerned, in the Committee, much debate in Cabinet is sometimes rendered unnecessary.

But for these developments, the Cabinet would be quite unable to dispose of the growing number of public questions with which the Government is concerned. The Cabinet may contain twenty or more ministers. Most of them have long political experience. Most of them

<sup>99</sup> Sometimes referred to as "the inner Cabinet," but erroneously, for it is purely informal and bears no relation to the "inner Cabinet" of the eighteenth century.

<sup>100</sup> 304 H.C. Deb. 5 s., 363 (1935).

have important departmental duties which, in their turn, have grown in number and importance. Most of them have popular constituencies to nurse. Most of them, too, have to attend to business in or near the House of Commons while it is sitting—and the House sits more frequently than it used to sit. Some of them, further, are concerned with the general management of their party machines.

Even now, complaints are sometimes made that the Cabinet is over-worked. Careful examination of those complaints suggests, first, that those who complain do not distinguish between the Cabinet work of ministers and their work in other capacities, and, secondly, that they usually arise during periods of political pressure. An agenda of fifteen items, every one of which has been carefully prepared, is not usually too long for a committee meeting of two hours. Experienced ministers are accustomed to rapid decisions. If the subject-matter is really controversial and has not been properly discussed beforehand, reference to a committee is an obvious expedient, and it is an expedient which is often adopted. But where there has been a full exploration of the ground, either inter-departmentally or in committee, a long debate ought not to be necessary. Where the point is one of real political importance, it may have been discussed informally by the leading ministers. The complaints arose chiefly immediately after the war, when the scope and variety of problems were alike enormous, during the Labour Governments, and since 1935.

We may put aside as wholly exceptional the problems of the post-war period. Also, no system of government can cope adequately with a situation such as that of 1935-36, when the Italo-Abyssinian conflict, the denunciation of the Locarno Treaty, the expansion of the defence services, the settlement of the Dardanelles question, the negotiations with Egypt, and the approval of Unemployment Assistance Regulations, all had to be settled almost at the same time. It is more instructive to consider the experience of the Labour Governments. Undoubtedly, a party which comes newly to power, with a vast mass of general proposals for social reform, must necessarily be called upon to do more work than a party which has been in power, with short intervals, for a long period, and which does not propose radical reforms. Also, the social and economic difficulties which the Labour Government of 1929-31 had to face were greater than those of any Government since 1922. That Government came into power just after the top of the boom had been reached, and world economic and, therefore, political difficulties were rapidly deteriorating. Further, the

Labour Governments had no majority in the House of Commons, and they had to face the opposition of the House of Lords to all their more important legislative proposals. Possibly, too, the difficulties of the Labour ministers were aggravated by their own inexperience. Few of them had had much departmental experience. They had, for the most part, been unable to pass through the regular progression from parliamentary private secretary to junior minister, and from junior minister to the Cabinet. Some of them were, in consequence, unable to make the fullest use of their official advisers. For all these reasons, the position of the Labour Governments was exceptional. Whatever happens, a Labour Government must be more hard pressed than a Conservative Government or a Coalition which contains a substantial Conservative element. But a Labour Government with a majority, and composed mainly of persons with previous ministerial experience, would, it is believed, be able to carry out reforms at a reasonable pace. It is certainly the impression that the Conservative Government of 1924-9 and the National Governments between 1932 and 1935 (omitting, therefore, the difficult period of the first National Government) were able to cope with their Cabinet business without difficulty.

It is true that sometimes decisions are not taken until too late. The Cabinet of 1884, and Mr. Gladstone in particular, was so concerned with the prospect of obtaining an international conference to discuss the problem of Egypt that there was no time to discuss the rescue of General Gordon.<sup>51</sup> Sometimes the appropriate minister has to take action with the Prime Minister's sanction and without consulting the Cabinet. Sometimes the minister himself takes action in the hope that his action will be ratified. Thus, in 1915 there was a dispute between Lord Kitchener at the War Office and Mr. Lloyd George at the Ministry of Munitions as to the provision of guns. Lord Kitchener appealed to the Cabinet, which set up a committee to determine whether the guns were necessary. The committee met and adjourned. But Mr. Lloyd George deemed the matter urgent and provided the guns without Cabinet sanction.<sup>52</sup>

The minister can always protect himself by consulting the leading ministers. For though in theory all Cabinet ministers are equal, in practice a few ministers dominate discussions by reason of their personality, their political support, and the importance of their offices. "In most Governments," said Mr. Lloyd George, "there are four or

<sup>51</sup> *Life of Sir Charles Dilke*, II, p. 57; *Life of the Eighth Duke of Devonshire*, I, pp. 465-6; *Life of Joseph Chamberlain*, I, p. 524.

<sup>52</sup> Lloyd George, *War Memoirs*, II, pp. 559-61.

five outstanding figures who by exceptional talent, experience, and personality, constitute the inner council which gives direction to the policy of a ministry. An administration that is not fortunate enough to possess such a group may pull through without mishap in tranquil season, but in an emergency it is hopelessly lost."<sup>22</sup>

Many examples could be cited;<sup>23</sup> but a few are of outstanding importance. In 1853, when the question was raised of sending ships for the protection of Constantinople, Lord Aberdeen summoned a meeting of five ministers. Lord John Russell attended as Secretary of State for Foreign Affairs. Sir James Graham, as First Lord of the Admiralty, was technically responsible and necessarily present. Lord Palmerston who, as Home Secretary, was not departmentally concerned, was summoned so as to prevent his opposing the step when Cabinet sanction was sought.<sup>24</sup>

In 1878, when the defence of Constantinople again became a question of policy, "an inner Cabinet was formed to direct the activities of the rest. It consisted of the Prime Minister, Lord Salisbury and Lord Cairns. . . . These three men met together constantly, went through the messages which had been received from abroad since their last consultation, and decided upon the action to be recommended to their colleagues."<sup>25</sup> The situation here was peculiar, for the Foreign Secretary, Lord Derby, was not in agreement with the Cabinet's policy. Thus, the inner Cabinet was actually in departmental control. It reported to the whole Cabinet, where the policy agreed upon was forced upon the Cabinet and sometimes telegrams were actually drafted in the Cabinet.<sup>26</sup>

In 1898 Lord Milner's letter from South Africa, which in effect contemplated war with the Transvaal, was circulated by Mr. Joseph Chamberlain, as Colonial Secretary, only to Mr. Balfour (acting Prime Minister), the Duke of Devonshire, the Chancellor of the Exchequer, the First Lord of the Admiralty, and the Secretary of State for War. Mr. Chamberlain answered without consulting the Cabinet.<sup>27</sup>

<sup>22</sup> *Ibid.* III, p. 1042.

<sup>23</sup> One of the earliest examples occurred in 1832. The Prime Minister (Lord Grey), the Lord Chancellor (Lord Brougham), and the Home Secretary (Lord Melbourne), decided an Irish question because the dispersion of ministers made a Cabinet impossible. *Melbourne Papers*, p. 190.

<sup>24</sup> *Life of the Earl of Clarendon*, II, p. 3; *Life of Henry Reeve*, I, p. 295.

<sup>25</sup> *Life of Robert, Marquis of Salisbury*, II, p. 209.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Life of Joseph Chamberlain*, II, p. 365.

The steps leading to the outbreak of war in 1914 were taken by the Foreign Secretary in consultation with the Prime Minister. The consequential steps, such as the carrying out by the departments of the plans of the Committee of Imperial Defence, were authorised by the ministers concerned after informal consultations.<sup>50</sup> Subsequently, the conduct of the war fell largely into the hands of committees of the Cabinet, until it became necessary to supersede the ordinary Cabinet altogether by the War Cabinet of five members.

In 1930 the Prime Minister, Mr. Henderson (Foreign Secretary), Mr. Thomas (Lord Privy Seal), Mr. Snowden (Chancellor of the Exchequer), and Mr. Clynes (Home Secretary), were in the habit of meeting once a week for a general conversation about the Parliamentary situation and the state of the Labour Party.<sup>51</sup>

The committee system is now an essential part of Cabinet procedure. Such committees were not unknown even in the first half of the nineteenth century. The Reform Bill of 1832 was drafted by a committee of four persons, not all of whom were members of the Cabinet.<sup>52</sup> That of 1851 was referred to a committee of three persons.<sup>53</sup> Committees were used during the Crimean War; and those of military affairs and coast defences were reconstituted in 1856.<sup>54</sup> The War Cabinet of 1916-19 developed the committee system considerably. Indeed, the War Cabinet discussed only general issues and its normal method of operation was through committees. The post-war Cabinets do not use committees so much, though they are a normal part of their working.

When the ordinary Cabinet was reconstituted in October, 1919, a Finance Committee, consisting of the Prime Minister, the Lord Privy Seal, the Chancellor of the Exchequer, the President of the Board of Trade and Lord Milner, was set up. It assisted the Chancellor of the Exchequer (Mr. Austen Chamberlain) in the preparation of the Budget and considered the reduction of the civil service and the armed forces to a peace establishment.<sup>55</sup> It is understood, however, that this

<sup>50</sup> Churchill, *World Crisis*, I, pp. 217-30. The decision to order Sir John French not to retire beyond the Seine after the retreat from Mons was taken by "a few ministers," who sent Lord Kitchener to France with "Cabinet instructions." Sir Edward Grey, Lord Kitchener and Mr. Churchill decided (in the absence of the Prime Minister) to send the Naval Brigade to the defence of Antwerp. See *Life of Lord Oxford and Asquith*, II, p. 125.

<sup>51</sup> Snowden, *Autobiography*, II, pp. 924-5.

<sup>52</sup> *Memoirs of Earl Spencer*, p. 292.

<sup>53</sup> Greville, *Memoirs*, 2nd Series, III, p. 418.

<sup>54</sup> *Panmure Papers*, II, p. 317.

<sup>55</sup> 120 H.C. Deb. 5 s., 744-5.

committee is no longer in existence. Questions of finance which are not settled by the Chancellor of the Exchequer are dealt with in full Cabinet though any question can be referred to an *ad hoc* committee if necessary. The chief standing committee of the Cabinet, the Committee of Imperial Defence and the Defence Policy and Requirements Committee apart, is the Home Affairs Committee, which was established by the War Cabinet in June, 1918, and has been reconstituted by every Cabinet since that date.

The Home Affairs Committee performs two functions. In the first place, it considers the technical aspects of all Government Bills. It considers, therefore, questions of drafting, purely legal questions such as the method of enforcement of provisions, the technical effect of the Bill upon Crown property, and so on. Questions of policy are not discussed, but must be reserved for the Cabinet. In the exercise of this function the committee is assisted by the Parliamentary Counsel to the Treasury and by such other officials as the ministers think fit to summon. In the second place, the committee recommends the Government business for the Session. It meets, therefore, at the beginning of the Session and, with the assistance of the Parliamentary Secretary to the Treasury and of such officials as may be summoned by ministers, it considers the Bills which might be produced during the Session, given the policy announced in the King's speech and the urgency of departmental Bills.

The committee is advisory only, and its conclusions and recommendations are embodied in the minutes of the committee, which are circulated to all members of the Cabinet. They are circulated, therefore, as Home Affairs papers and not as Cabinet papers, since there is no distinction, as there is with other committees, between the report and the minutes. But in due course the recommendations are placed on the Cabinet agenda. The examination of Government Bills in this way is believed to be useful. In particular it enables the law officers to discuss the legal aspects of the legislative proposals and to explain to their colleagues the legal and technical difficulties which arise. Agreed modifications and amendments may be introduced at this stage and difficulties avoided which would otherwise have involved considerable departmental correspondence and, perhaps, loss of time and Parliamentary embarrassment.

Other committees are appointed for specific purposes. This does not necessarily mean that the committee ceases to sit as soon as it has reported to the Cabinet. It is frequently asked to consider and report



on or to take decisions on questions consequential upon the decision of the Cabinet. Suppose, for example, that the Board of Education desires to propose an important amendment of the law relating to Education, which will involve the voluntary schools, and therefore the various religious communities. The proposal will be made by means of a memorandum circulated to the Cabinet. The observations of the Chancellor of the Exchequer will probably be circulated at the same time. The questions involved being difficult, they will probably be referred to a committee. This Education Committee will prepare a report, which will be circulated to the Cabinet and, we will assume, will be approved by that body. But much will depend upon the actual provisions of the Bill. Accordingly, the Education Committee will be asked to supervise the drafting of the Bill. The Bill itself will be drafted in the Parliamentary Counsel's Office in collaboration with the officials of the Board of Education. It will then be presented in draft to the Education Committee, which will consider the political difficulties raised. These having been settled and the Bill amended, it will be brought before the Home Affairs Committee, where any drafting and legal difficulties will be discussed. At this point some other department, such as the Ministry of Health, may desire to raise certain questions. If these raise issues of policy, they will be brought before the Education Committee and there settled. Thus, the Bill which is ultimately brought before the Cabinet on the report of the Home Affairs Committee will often be an agreed measure, and much further discussion will be unnecessary.

The Secretary to the Cabinet or, as is in fact usually the case, the Deputy-Secretary, acts as secretary to all Cabinet Committees with the assistance of the Treasury Principal mentioned on page 245. Where, however, the question involved is of a technical nature, an official from the department most concerned will act as joint secretary. Documents are circulated to the committee as to the Cabinet, and minutes are kept. These minutes are rather fuller than are the minutes of the Cabinet. The report containing the committee's recommendations, when approved by the chairman of the committee, is circulated to the Cabinet as a Cabinet paper. It is for the Cabinet itself to reach decisions on the recommendations so submitted.

At every committee which considers serious departmental issues the ministerial heads of the departments concerned must necessarily be present. They alone are fully informed of the nature of the problem; they will have the responsibility of carrying out the decision to which

the Cabinet may come on the recommendation of the committee. Since most questions of government involve financial considerations, it follows that the Chancellor of the Exchequer usually has more committee work than any other minister.

Again, when foreign affairs are disturbed, the Foreign Secretary will necessarily have much committee work in spite of the pressing demands of his own departmental questions. The Prime Minister himself will be chairman of many of the most important committees. One result of the Cabinet system is, therefore, that the burden of committee discussion falls primarily on ministers who are already oppressed with much departmental work. Also, they cannot substantially be relieved by the appointment to committees of ministers with less urgent departmental work or of ministers without portfolio. There are no doubt in every Cabinet, ministers of wide experience possessing the ability to seize the issues of a complicated question of whose background they have no official knowledge. A minister without heavy departmental duties may be useful as chairman of a committee to consider an intractable inter-departmental question. Sometimes, too, a junior minister can take the place of the ministerial head of a department. But, speaking generally, Cabinet committees necessarily require the assistance of the members familiar with the questions to be discussed. Consequently, when a minister's departmental duties become heaviest his work on Cabinet committees also becomes heavy. Since a Cabinet may at a given time have as many as thirty committees in existence, and since as many as fifteen of these may involve financial questions and necessitate the presence of the Chancellor of the Exchequer or of the Financial Secretary to the Treasury, it can readily be understood that committee work may be largely the cause of that pressure of Cabinet business which is so obvious in times of emergency or political difficulty.

The results of the committee system can be stated in general terms only. It can be assumed, however, that if a committee produces an agreed report subsequent Cabinet discussion is rarely necessary. If, on the other hand, the committee cannot reach agreement, the whole question is thrown open in the Cabinet. On one occasion recently a committee was agreed except for the chairman. The chairman having stated the view of the committee, proceeded to state his own view. Thereupon the Prime Minister emphatically asserted his agreement with the chairman, and after little more discussion the Cabinet accepted his point of view. It appears, however, that committee dis-

agreements are rare. The committee contains the ministers primarily concerned. If they cannot find a compromise in committee, it is unlikely that they will be able to reach a compromise in Cabinet. But the whole process of Cabinet government implies compromise, and it is the purpose of a committee to find the formula in which that compromise can be stated.

The Cabinet takes decisions by a majority whenever it cannot reach an agreed conclusion. It appears that the practice of taking votes and deciding by a majority did not originate until 1880. The decision to arrest Dillon in 1881 was carried by Mr. Gladstone's casting vote. Lord Granville, who was not present, later said that "he never knew numbers counted in the Cabinet before, and that it was absurd to count heads in assemblies in which there was such a difference in the contents of the heads."<sup>65</sup> (A criticism that applies to all counting of heads.) The question of the removal of the Duke of Wellington's statue from Hyde Park Corner in 1883 was decided by a show of hands. Sir Charles Dilke said that "it was the only subject upon which, while I was a member of it, I ever knew the Cabinet to take a show of hands."<sup>66</sup> This appears not to be correct, for Lord Granville told Mr. Gladstone in 1886, "I think you too often counted noses in your last Cabinet,"<sup>67</sup> and Lord Morley gives examples.<sup>68</sup>

In any case, the taking of votes is exceptional. It is said that on the Education Bill in 1901, the Cabinet divided several times, "a practice which large Cabinets have rendered unavoidable."<sup>69</sup> It was decided to restrict the Bill to secondary education by a vote of ten to eight.<sup>70</sup> Nevertheless, Lord Oxford and Asquith wrote: "It is not, or was not in any other Cabinets, in which I have sat, the custom (unless in exceptional cases not always of the first importance) to take a division."<sup>71</sup> It may be assumed that fewer divisions of opinion appeared in Conservative than in Liberal Cabinets. It is the general experience, however, that votes are rare. The debate is continued until agreement is reached. The Naval Estimates of 1913 were the main and often the sole topic of discussion at fourteen full meetings of the Cabinet.<sup>72</sup>

The Cabinet itself is a committee, and it comes to its conclusions in much the same way as other committees. That is, it talks around

<sup>65</sup> *Life of Sir Charles Dilke*, I, p. 370.

<sup>66</sup> *Ibid.* I, p. 528. Dilke was not in the Cabinet of 1881.

<sup>67</sup> *Life of Gladstone*, III, p. 5.

<sup>68</sup> *Ibid.*

<sup>69</sup> Fitzroy, *Memoirs*, I, p. 63.

<sup>70</sup> *Ibid.* I, p. 67.

<sup>71</sup> *Fifty Years of Parliament*, II, p. 196.

<sup>72</sup> Churchill, *World Crisis*, I, p. 172.

a subject until some compromise suggests itself. Only when there are fundamental divergencies does the majority override the minority. The problem of securing agreement is greater in the Cabinet, partly because of the fundamental importance of its decisions, and partly because, as will be explained presently, it is the duty of the dissenting minority either to resign or to support the decision of the majority. Resignations may entail the breaking up of the Cabinet and in addition, a party split. Great efforts are therefore made to secure agreement. Compromise is the first and last order of the day.

Disraeli once said that in his Cabinet of twelve members there were seven different opinions.<sup>71</sup> The problem is not merely that there may be divergent views of general public policy or of the effect of that policy on public opinion; frequently the Cabinet has to choose between rival experts.

From beginning to end (of the war of 1914-18) civilian ministers found themselves compelled to choose between rival and competing military plans, each of which had highly expert authority behind it, and to adjust whatever plan was chosen to the policy and strategy of Allies. . . . In whatever way the ministerial pack might be shuffled, it was not to be supposed that active and conscientious men who accepted responsibility for the results would remain mere spectators of the conflict, or refrain from expressing opinions which they held with conviction. Lord Kitchener is reported to have said after one of his differences with the Cabinet that it was "repugnant to him to have to reveal military secrets to twenty-three gentlemen with whom he was barely acquainted," but the twenty-three being charged with the ultimate responsibility could not reasonably be asked to accept the plea of military necessity as a ground for keeping them in ignorance of the facts.<sup>72</sup>

Yet the task of securing agreement is not so difficult as it sounds. A difference between two ministers or two departments can usually be settled by a private consultation or by arbitration by the Prime Minister. In the Cabinet the Prime Minister occupies a position of pre-eminence, varying in strength according to the weight of personality, which frequently enables him to impose a decision. If, as may sometimes happen, agreement is reached among the more prominent Cabinet ministers, it may be assumed that the agreement of the Cabinet will, as a rule, follow.<sup>73</sup>

<sup>71</sup> This was on the Russo-Turkish War in 1877: *Life of Disraeli*, II, p. 1066.

<sup>72</sup> *Life of Lord Oxford and Asquith*, II, pp. 123-4.

<sup>73</sup> Another method of securing agreement is indicated in the following passage: "What really happens in the Cabinet is that . . . the Secretary of State for War brings forward his Estimates and then his right hon. friends bring forward their Estimates. They never criticise each other. There is a tacit understanding that they will always vote for each other's Estimates": 215 H.C. Deb. 5 s., 1039.

Above all, the Cabinet is usually composed of leaders of a single party. The Prime Minister is the leader of that party, and his twenty or so colleagues owe him a personal as well as a party allegiance.<sup>76</sup> They are at various stages of their political careers, and only a few have substantial personal prestige. They have a common party loyalty and, generally, a common political faith. It may be true, as Mr. Lloyd George has said, that there is "no generosity at the top." There is, however, a tradition of appearing to be generous, partly at least because it is good policy. Moreover, it is difficult for an ambitious politician—and the most obstreperous minister is usually the most ambitious—to separate himself from his party. A dissenting minister who threatens to resign has to consider whether his presence is necessary to the Government. A minister who miscalculates—as when Lord Randolph Churchill "forgot Goschen"—*may send himself into the political wilderness*. A minister who resigns on the ground of disagreement must, if his political ambition is to be further realised, either form a new party or join the Opposition. Lord John Russell's resignation in 1855 prevented him from again becoming Prime Minister until after Palmerston's death. Lord Derby, Disraeli's Foreign Secretary, became a Liberal. The Liberal Unionists struggled back into office under a Conservative Prime Minister. Mr. Winston Churchill, after each tergiversation, had to wait for office. Other less eminent men have undergone political extinction.

In any case, office has its attractions. It is natural for a politician to hesitate before he consigns himself to the back benches. He must choose between his opinions and his prospects; usually, he forgoes the former. So, Tories who supported Peel against Catholic Relief and the repeal of the Corn Laws supported him in effecting both. Conservatives who cheered Disraeli's attacks on Gladstone's Reform Bill cheered him also when he "dished the Whigs." Whigs who were Conservative in all but name supported Radical measures until Home Rule became the order of the day. Free-trade Liberals found special circumstances to justify protective duties. We need not always assume motives; but motives are commonly mixed.

## 6. Coalitions

No such considerations strengthen a Coalition Government. Here there may be little personal and no party loyalty. The Cabinet has a

<sup>76</sup> For instance, most of his colleagues supported Peel in 1845 and 1846 though they had strong views about the Corn Laws. Cf. Greville, *Memoirs*, 2nd Series, II, p. 364

plethora of eminence. There are rival policies as well as rival ambitions. "England," said Disraeli, "does not love Coalitions." The truth is that Coalitions do not love each other. Both Mr. Gladstone and the Duke of Argyll have testified to the smoothness with which Lord Aberdeen's Cabinet of 1852-5 functioned. The latter said: "I have been a member of every Liberal Cabinet that succeeded it for twenty-nine years, and I never saw any of them which worked more smoothly or with less individual friction." It may be noticed that it produced an amalgamation of Whigs and Peelites which had only been prevented before by Lord John Russell's "chalking 'No-Popery'" and running away. In any event, the Duke could not have been aware of the broadsides which Lord John Russell fired at Lord Aberdeen or the discussions between these two and Lord Clarendon." Great Britain muddled into the Crimean War because the Cabinet was divided; and because it was divided it accepted compromises which led it inevitably nearer and nearer to war. The fleet was sent to the Dardanelles because some wanted offensive operations and some wanted no operations at all. The compromise was necessary to prevent the break-up of the Cabinet. It inevitably led to war, though it did not itself denote war.

The coalition of 1895 was not really a coalition at all. The Conservative Party was renewing its youth by an infusion of Whig men. Of the coalition of 1915 we have some graphic descriptions. Its members "were constantly looking over their shoulders to see whether they could carry their parties with them."<sup>10</sup> On the question of conscription, Mr. Bonar Law informed Mr. Asquith: "I believe that it is easier for you to obtain the consent of your party to general compulsion than for me to obtain the consent of my party to its not being adopted."<sup>11</sup> Mr. Asquith could not close debate in the Dardanelles Committee because some members did not belong to his party.<sup>12</sup> Mr. Winston Churchill was, no doubt, a prejudiced observer, but his remarks bear the stamp of credibility.

Whereas practically all the important matters connected with the war had been dealt with in the late Government by four or five ministers, at least a

<sup>10</sup> *English Historical Review*, II, p. 288; *Life of Gladstone*, p. 495.

<sup>11</sup> *Autobiography and Memoirs*, I, p. 388.

<sup>12</sup> Cf. *Life of Gladstone*, I, p. 495, and Gladstone, "The History of 1852-60 and Greville's Latest Journals," *English Historical Review*, II, pp. 288-9. In any case, those who approved of the war approved on very different grounds: *ibid.* p. 289. See also Gordon, *Life of Lord Aberdeen*, ch. x.

<sup>13</sup> *Life of Lord Oxford and Asquith*, II, p. 211.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.* II, p. 188.

dozen powerful, capable, distinguished personalities who were in a position to assert themselves had to be consulted. The progress of business therefore became cumbrous and laborious in the last degree, and though all these evils were corrected by earnest patriotism and loyalty, the general result was bound to be disappointing. Those who had knowledge had pasts to defend; those free from war commitments were also free from war experience. At least five or six different opinions prevailed on every great topic, and every operative decision was obtained only by prolonged, discursive and exhausting discussions. Far more often we laboured through long delays to unsatisfactory compromises.<sup>82</sup>

Again, "from the moment of the formation of the Coalition power was dispersed and councils were divided, and every military decision had to be carried out by the same sort of process of tact, temporising, and exhaustion which occurs over a clause in a keenly contested Bill in the House of Commons in time of peace."<sup>83</sup> Finally, "I was, and am, strongly of opinion that it would have been better to break up the Cabinet, and let one section or the other carry out their view in its integrity, than to preserve what was called the 'national unity' at the expense of vital executive action."<sup>84</sup>

Mr. Lloyd George solved the problem by putting the Cabinet out of action for the duration of the war. Though by 1919 the party lines of five years before had been all but obliterated, the revived Cabinet did not long survive the tumults of peace. But the "national unity" was restored in 1931 and a Coalition Government—this time called "National"—was again formed. Of this we know little save that on a most vital point its unity was maintained by an agreement not to be united. After the defection of the "independent" Liberals and Lord Snowden, there was nobody of outstanding personality who was not, in sympathy if not in affiliation, a Conservative.

<sup>82</sup> Churchill, *World Crisis*, II, p. 384.

<sup>83</sup> *Ibid.* II, p. 393.

<sup>84</sup> *Ibid.* II, p. 477. Cf. Lord Stanley in 1834: "Confidence in public men has been more shaken by coalitions than by all the acts of personal misconduct taken together": *Peel Memoirs*, II, p. 40. But this is a conclusion drawn from a completely different Constitution, that of George III.

## XIV

### EARL CURZON OF KEDLESTON

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#### *Speech on the War Cabinet, June 19, 1918\**

LET me begin by asking, What was the old Cabinet system which the present Government was intended to replace? I do not think I need say much about it, because I have noted with great interest that both the noble Marquess, Lord Lansdowne, and my noble friend Lord Crewe, who speak with a vastly greater experience of the old Cabinet form of Government than I can claim, have both admitted in your Lordship's House that it was obsolete, that it was no longer adapted to the circumstances of the day, that radical alteration was required in it for the purposes of the war, and that, to use my noble friend Lord Lansdowne's phrase, it is idle to think we can ever go back. I entirely agree in these remarks. My own experience of the old Cabinet system was limited to the year and a half in which I had the honour to serve, with many of my noble friends on both sides of this House, under Mr. Asquith. I certainly formed an impression at the time that that Cabinet was faulty for the purposes of peace and quite impossible in time of war. It was so imperfect for the conduct of the war that, as my noble friends will remember, war work had to be devolved upon smaller bodies. We started with a body called the Dardanelles Committee, because that was the campaign which at the moment was occupying the greater part of the attention of the Government; but as time went on, as the military expeditions to Salonika and Mesopotamia became involved, so did the Dardanelles Committee, without actually losing its name, expand into a War Committee. Its numbers varied, but at one time they reached, if I remember aright, a total of at least ten, if not more.

Then occurred the stage, which my noble friends will remember, when the entire Cabinet, convinced that this was an inadequate and

\*Parliamentary Debates, House of Lords, Fifth Series, Vol. 30, 1918, pp 262-82. Reprinted by kind permission of His Majesty's Stationery Office.



over-cumbrous machine, petitioned the Prime Minister to place the conduct of the war in the hands of a smaller body. The original numbers of that War Cabinet were five. It was afterwards increased to six; then to seven; I am not certain that it was not eight. But my noble friend Lord Lansdowne was quite right in saying that all the while the authority and responsibility of the main Cabinet remained in the background, and it was understood and frequently acted upon that any large issues of policy, certainly anything involving a considerable departure of policy, should come to the Cabinet as a whole before it received executive sanction.

There were, therefore, at that time two Cabinets, subject to the qualification I have made. I have said that I regarded the machinery as imperfect for the purposes of war. Was it effective for the conditions of peace? I would ask noble Lords who are now pleading for two Cabinets to bear in mind their recollection and experience of what happened at that time. I am treating matters as they were. My noble friends will bear me out when I say that meetings of the Cabinet were most irregular; sometimes only once, seldom more than twice, a week. There was no agenda, there was no order of business. Any Minister requiring to bring up a matter either of Departmental or of public importance had to seek the permission of the Prime Minister to do so. No one else, broadly speaking, was warned in advance. It was difficult for any Minister to secure an interstice in the general discussion in which he could place his own case. No record whatever was kept of our proceedings, except the private and personal letter written by the Prime Minister to the Sovereign, the contents of which, of course, are never seen by anybody else. The Cabinet often had the very haziest notion as to what its decisions were; and I appeal not only to my own experience but to the experience of every Cabinet Minister who sits in this House, and to the records contained in the memoirs of half-a-dozen Prime Ministers in the past, that cases frequently arose when the matter was left so much in doubt that a Minister went away and acted upon what he thought was a decision which subsequently turned out to be no decision at all, or was repudiated by his colleagues. No one will deny that a system, however embedded in the traditions of the past and consecrated by constitutional custom which was attended by these defects was a system which was destined, immediately it came into contact with the hard realities of war, to crumble into dust at once.

When Departmental differences arose in those days, how were they settled? Long delays ensued then, just as we are told they do now. Ministers found the utmost difficulty in securing decisions because the Cabinet was always congested with business; and, to make a long story short, I do not think any one will deny that the old Cabinet system had irretrievably broken down, both as a war machine and as a peace machine. This was partly due, no doubt, to the size of the Cabinet, which had swollen to the preposterous number of twenty-three or twenty-four; although I should like to say that the idea of my noble friend that large Cabinets have only been the evolution of the past quarter of a century of our history is quite mistaken. If you will go back to the Ministry of Lord Grey, which passed the Reform Bill, or the early Ministries of Lord John Russell, Lord Derby, and Lord Palmerston, you will find that in all these cases the number did not fall below sixteen, and the idea that less than half a century ago there were only ten members of the Cabinet is one which finds small justification in the recorded history of those days. The failure of the old Cabinet system was partly due to the excessive numbers, but still more, I think, it was due to the total lack of businesslike procedure on which I have already commented.

Then the present Government was formed, and a number of changes were introduced. I may very briefly tell the House what they were. I am sure your Lordships, in many cases, know what they were as well as I do. There was a substantial reduction in number. The War Cabinet began by being five; it afterwards rose to six and seven, and the present number is six. Secondly, the Ministers who were appointed to it were deliberately chosen, because for the most part they were without portfolio; they were, therefore, freed from the general administrative work, and were regarded as more likely to be able to devote their whole energy to the prosecution of the task with which they were charged. It was for this obvious reason that the Secretaries of State for Foreign Affairs, War, the Colonies, India, and the First Lord of the Admiralty, were not made permanent members of the War Cabinet, though, as is well known, they are always present at any discussion, in which their Department is concerned, and many of them are constantly present at the entire session of the Cabinet from day to day. Thirdly, a new feature was the regularity of meetings. These take place at half-past eleven or twelve o'clock in the morning; indeed there are very often two, and sometimes three,

meetings in the day. Your Lordships can well understand that the fact of there being so small a total of Ministers, whose duty it is habitually to remain in London, renders it very easy to summon them by telephone, almost at a moment's notice, and makes it a great deal easier than it would have been in the old days of much larger Cabinet bodies. In fact, the present system is that of a Cabinet in permanent session; I want your Lordships clearly to get that in your minds.

VISCOUNT MIDLETON: Is my noble friend quite correct in what he has just stated? Does he really maintain that in the past the Secretary of State for War has been at all meetings at which the Chief of the Imperial Staff was present?

EARL CURZON OF KEDLESTON: I should not like to pledge myself absolutely to that, but my impression is that on every occasion when war matters have been discussed, matters upon which the Secretary of State for War was entitled to have or desirous to give an opinion, he has been there. If the noble Viscount has instances to the contrary, I hope he will give them to me. Let me give the figures. This Government has been in existence for eighteen months. During that time there have been 525 meetings of the War Cabinet and of the Imperial War Cabinet, which replaces the War Cabinet when it is in existence in this country. In addition, there have been thirty conferences, or meetings, with our Allies, at which the War Cabinet, or the greater part of the War Cabinet have been present. Thus there have been 555 meetings in 474 working days, excluding Sundays. This is exclusive of the meetings of the Committees of the Cabinet, which have frequently supplemented and sometimes taken the place of Cabinet meetings. My noble friend Lord Lansdowne paid a compliment to our labours, and I am sure I am therefore entitled to say without vanity that such a record of administrative activity has never been approached at any other period of our history.

You may ask me how these figures compare with the days that preceded us. I have not been able to obtain figures for the whole of the time, but I find that in the interval (*i.e.*, the space of five months) between July 16, 1916, and December 8, 1916, when the present Government was formed, there were forty-one meetings of the then War Committee, eighteen meetings of the Cabinet only, or a total of fifty-nine in 146 days. The present Government came into office in December, and in the interval (again of five months) between December 9, 1916, and May 3, 1917, the War Cabinet meetings were 126, special Cabinet meetings 6, Imperial War Cabinet

meetings, 14, or a total of 146 meetings in 146 days, including Sundays, or 125 days excluding Sundays. Take another period. From September 20, 1917, to February 12, 1918, there were 131 meetings in a similar period of 125 working days, excluding Sundays. I have given your Lordships the figures for the whole period during which the present Government has been in power.

I pass, with your permission, to the procedure adopted. And here I hope that what I have to say may dissipate a good deal of what I can only regard as misapprehension. Every morning the day begins by reports on the military, naval, and air situation by the representatives of those Departments. The meeting of the Cabinet is attended by the Secretary of State for War, by the Chief of the General Staff, very often by the Director of Military Intelligence; and there are present, representing the Navy, frequently the First Lord, invariably *the First Sea Lord, or a deputy representing him if he is called elsewhere*. Frequently in addition other military or naval officers—the Adjutant-General, the Quartermaster-General, the Director of Military Operations—are present, and when we have the good fortune to have in this country the eminent Field-Marshal commanding in France, or other distinguished Commanders from other theatres of war, they also are not infrequently invited to our discussions. That is the first business of the day. It may occupy half an hour or an hour, or it may occupy more. It may conceivably extend over the whole of the sitting of the Cabinet.

Let me say before I pass away from this, that I doubt very much whether there has ever been a war waged by this country in which the military advisers of the Government have had a freer hand in the expression of their views, or in which there has been more deference paid to their opinion. I, of course, have not had much experience myself, at any rate of what has happened at other times, but I can truthfully say that I can hardly imagine a situation or a Government in which a more consistent desire has been not only expressed but acted upon to give due consideration to the views of military advisers and also to accept the advice which they have offered. I doubt if there has ever been a war in which the record of a Government has been cleaner in that respect.

These discussions are followed as a rule by a discussion on the foreign or diplomatic situation at which the Foreign Secretary is invariably present, frequently accompanied by the Parliamentary Under-Secretary or Minister of Blockade, and sometimes by experts from his

Department. I say emphatically that no question in either of these categories, military or naval on the one hand, or diplomatic on the other, has ever been delayed, or if it has been delayed it has not been due to the existence of the Cabinet system or to the manner in which it is worked, but it has been due to the character of the case itself.

After this we proceed to what may be described as the agenda of the day. Here let me at once brush away the idea that when the present Cabinet was formed there was any thought in our minds, or I believe in the minds of anybody else, that we should confine ourselves solely and exclusively to matters connected with the war. We never threw off our shoulders the general responsibility of government. The Ministry were called a War Cabinet because their main function is war, but the idea that they were not held accountable for the administration of the vast number of affairs that ordinarily rest upon the Government of this country never entered into our heads, and certainly could not be deduced from anything that I have said, or I believe that any representative of the Government has said in either House of Parliament. We then come to the agenda of the day. Here we approach all the topics of administrative, or Parliamentary, or domestic concern which come before a Government whether in time of peace or of war. A list is prepared in advance. The subjects are put down upon the list by the Prime Minister or by any member of the War Cabinet who desires to bring a matter up, or at the request of any Minister or Department that is concerned, or at the instance of the Secretary of the War Cabinet. A timetable is fixed for each subject, and the convenience of Ministers, which the noble Viscount seemed to think was dangerously imperilled by their having to sit occasionally in a not uncomfortable seat outside the Cabinet Chamber, is endeavoured to be served by the arrangement, as I say, of summoning them by telephone a few minutes before their case comes up for discussion.

I ask the question, Is there congestion under this plan? I answer No, emphatically No, and I challenge contradiction. I say that there is not, and I will give you my proof. At the beginning of each week a list is circulated by the Secretary of the War Cabinet of all the subjects, from whatever Department they may emanate, which are ripe for consideration by the Cabinet. During the last three months the weekly average has been thirteen. This list is usually cleared off in the first two or three days of the week. There were only six on the list yesterday, nearly all of which were disposed of this morning.

Sometimes a clearance meeting is held at the end of the week in order to rub the slate clean, and Ministers have not infrequently been able to dispense with a sitting on Saturday because there was no business to be done.

I pass to another feature of the present system. I have described the manner in which Ministers are summoned to the Cabinet room. A Minister may bring with him the Departmental experts by whom he is guided and by whose counsel he may wish his opinion to be fortified when he meets the Cabinet. Thus, as I have explained, the Foreign Secretary constantly brings the experts of his Department. The Secretary of State for India brings with him, if required, the Parliamentary Under-Secretary, the Permanent Under-Secretary, and sometimes the military adviser of his Office. If on any of the topics that are down for discussion two Ministers disagree, and if the question has not been settled in advance by conference or committee, each Minister of the Department circulates a Paper stating the case. The experts are then heard at the War Cabinet. A discussion takes place, and a decision is arrived at. This opening of the doors of the Cabinet room is, of course, an entirely new feature in our system. My noble friends who are scattered about these benches will bear me out when I say that in olden days the Cabinet was regarded as almost sacrosanct. It was a kind of Star Chamber which sat with closed doors, through which no one was allowed to penetrate, and across whose threshold the shadow of any stranger was only on the rarest occasions allowed to fall. To-day if we are discussing questions affecting labour, shipping, agriculture, or the Irish question, outside authorities are freely admitted. The Cabinet benefits in my judgment from that, because we hear the views of the experts expressed from their own lips, and the experts themselves are grateful for this system because they have a chance of being heard. They hear the discussion in the War Cabinet and they are made acquainted with the decision that is arrived at. In some respects these meetings bear a certain resemblance to the custom with which some of us are familiar in Oriental countries and which is there known as *Durbar*. I do not speak of a *Durbar* in its ceremonial application; I am far from suggesting that there is anything ceremonial about our appearance or conduct. I allude to a *Durbar* in the more common sense familiar to those of my noble friends who have been in Eastern countries—*i.e.*, an open court at which the Sovereign sits in judgment amidst his counsellors. Very often in Eastern courts the ordinary public is admitted. This is a

system implanted in the traditions of the East, some features of which we have, I think, not unsuccessfully adopted on the present occasion.

The number of persons not being War Cabinet Ministers who have in this way attended the meetings of the War Cabinet during the past year and a half has been 381, several of them attending many times. My noble friend Lord Midleton quite unfairly spoke of these as interviews. Really, if you go into a Cabinet room and are one of a body of ten, fifteen, twenty, sometimes thirty people, you do not describe yourself as having an interview with the Prime Minister. That is an abuse of language. These gentlemen attended not for the purposes of an interview with one Minister or another, but in order to have an opportunity of explaining their views to the Cabinet as a whole. Finally, the discussion is reported, and the decision is recorded by a staff of very able secretaries. I was glad, by the way, to hear a compliment paid by one noble Lord to Sir Maurice Hankey, the Secretary of the War Cabinet. That distinguished officer, by his ability, his industry, his knowledge of affairs, and his unfailing tact, has really been far more responsible than any other individual for what I claim to be the successful working of the system, and when history is written he will deserve his own niche in the temple which records the builders of our national Constitution. These reports of the proceedings are circulated in type the same evening for the consideration of the Ministers who have been present. They are submitted for their correction, and a day or two later they appear in print for record. And how valuable that record may be, how indispensable in some cases it has been shown to be, may be illustrated by the case that arose over what was known as the Maurice letter in the newspapers a short time ago, in which, if it had not been for the existence of such a record as I have described, it would have been impossible to make the case that was made in the other House of Parliament.

I turn to another aspect of our work, and I think, from the point of view of this debate, that this is the aspect to which your Lordships will attach the most importance. My noble friend Lord Lansdowne spoke in general terms about the process of devolution and delegation that is always going on in Cabinet government, and which I think he was anxious to see developed in the working of the present system. Delegation has been a part, I believe, of the system of every Cabinet that has ever existed in this country, certainly during the last century, but it has been developed to an enormous degree under the system which I am now describing. There are two classes of questions which

are thus treated. There are some questions which affect a single Department only, but which require Cabinet authority. Then there is the vastly larger range of questions overlapping the spheres of many Departments, perhaps affecting eight or ten or even a dozen Departments. If these raise questions of high policy they are brought to the War Cabinet, argued, and decided there. If not, we have to provide for their examination, discussion, and decision outside.

Now let me explain to your Lordships how this is done. There are three methods by which this aspect of the problem is sought to be met. First, there is a delegation of questions with power of decision, or, if decision is difficult, then for reference back, to one or two Ministers. Every one of us who is in the War Cabinet has had such questions assigned to him for decision, either alone or in conjunction with one of his colleagues. This, of course, relates to matters of administration with which it is not necessary to trouble the War Cabinet—the kind of things with which the noble Viscount seems to think that we are saddled day by day. These matters are dealt with promptly, and, I think, successfully. Very often the question is referred to a Minister at a Cabinet in the morning, he meets the Ministers concerned in the afternoon, and the thing is settled before nightfall; and this system is one which I believe to be extremely popular with the Departments themselves.

The second method is that of what I may describe as *ad hoc* Committees—Committees formed for the examination and solution of particular classes of questions, questions which are constantly coming up and which fall more or less into a single group or under a single heading. There have been ninety-two of those Committees during the last year and a half, and they have been attended, of course, not by War Cabinet Ministers only, but by other Ministers and other persons as well. The kind of questions that have been referred to these *ad hoc* Committees have been such questions as shipping, imports, labour, liquor, man-power, food production, registration, agricultural policy, Army and Navy pay. These Committees have sat once, or twice, or thrice, as the occasion demanded; the matter has been fully examined, the decision has been reported to the Cabinet; and, unless a serious division of opinion arose, it has been confirmed by them.

I pass to the third method. Out of those two methods that I have described—the Committees consisting of individual Ministers and the *ad hoc* Committees—has gradually been evolved, by an organic pro-



cess, the existence of a number of permanent Committees which are in constant and regular session. I will give an illustration of what these Committees are. It became customary in the middle days of our existence to refer questions of priority for manufacture, labour, and materials between the various Departments to one of our number, General Smuts. Out of this has arisen the War Priorities Committee, to which my noble friend Lord Midleton referred. And as regards the case to which he alluded of some conflagration at a school in which he was interested, I really do not know what the bearing of his remarks was. That was obviously a question which had nothing to do with the War Cabinet; it could not conceivably come before us. It was a question which the War Priorities Committee was constituted to deal with; and, if my noble friend had placed himself in touch with that Committee, he would have been spared making that portion of his speech this afternoon.

I will proceed with my illustrations. Before the Air Ministry was constructed there was an Air Policy Committee, which was also under the control of General Smuts. That Committee became unnecessary as soon as we had a full blown Air Ministry with the full powers which were conferred upon it by the Act which your Lordships helped to pass into law a little while ago. Then there is an Economic Defence Committee, under the chairmanship of Mr. Chamberlain, which has taken over the work of two or more Committees between which it was divided at an early stage. Fourthly, there is a Standing Committee on Eastern Affairs dealing with the multifarious problems, increasing in significance and in moment day by day and week by week, that arise between the Eastern shores of the Mediterranean and the frontiers of India—Palestine, the Caucasus, Mesopotamia, Persia, Central Asia, and so on. Of that Committee the Foreign Secretary and the Permanent Under-Secretary at the Foreign Office are members; so are the Secretary of State for India and experts in his Department, the Chief of the General Staff, the Director of Military Intelligence, General Smuts and myself as chairman.

To this list there has recently been added the Committee about which so many questions have been addressed to us this afternoon—namely, a Committee on Home Affairs. In the absence of the Home Secretary the Committee has not yet met, but it is to consist of the principal Home Ministers—the Local Government Board, the Board of Trade, and many others; I need not give the exhaustive list this evening. The Committee will meet, under the presidency of the

Home Secretary, at least once a week, and all domestic questions will be referred to it that require the co-operation of more than one Department and that call for Cabinet decision. I ought to say, in passing, that on all of these Committees to which I have referred—these Standing Committees—the Treasury is represented, if it desires so to be; and your Lordships can easily imagine that in most cases financial interests have to be looked after by the presence of a representative of that Department.

My noble friend Lord Lansdowne asked me, What exactly are to be the functions and powers of this Committee? They really are on the same footing as the other Committees to which I have referred. This Committee, like them, will have the power of deciding on behalf of the Cabinet at the discretion of the chairman, but, as in the case of the other Committees, larger questions of policy will be referred at his discretion to the War Cabinet. I think that this Committee may be a valuable addition to our system. It is the latest—perhaps it may not be the last—development of a system which I have been arguing to your Lordships has been well tried and is now soundly established in experience; and all the way through my remarks this afternoon I hope I do not give your Lordships the idea that I am claiming for one moment that a final step has been reached in our organisation or re-organisation. Our system is essentially a fluid system. We are building up our own experience from day to day; and just as we have added the Committee to which I have referred, so it may be necessary to add other Committees or to alter the constitution or powers of Committees in the future.

One noble Lord asked a question about the co-ordination between these Committees and the War Cabinet—what is the *liaison*, or touch, between the two parties. Well, the co-ordination is secured by the fact that the chairman is either a member of the War Cabinet or else a person who has access to the whole of the Cabinet proceedings; by the fact that the secretaries of these Committees are in all cases selected from among the Assistant Secretaries of the War Cabinet; by keeping the records, first in type and then in print, in the same form as the records of the Cabinet; and, finally, by the circulation to the members of the War Cabinet of the proceedings of these various Committees, whether they are Standing Committees or the *ad hoc* Committees to which I referred as having existed in an earlier stage. I have now endeavoured to describe the system of Committees with which we are working.

Then there are two other forms of consultation to which recourse is frequently made. One is conferences, presided over by the Prime Minister, with important bodies or interests concerned with matters that are likely to come up for decision. I will take the case of Ireland. My noble friend Lord Midleton has himself attended on many occasions at these conferences. They are outside the ordinary Cabinet system, but they are an invaluable and indispensable method of acquainting the Prime Minister, who is usually attended by several of his colleagues, with the views that are desired to be brought before him by important sections of public opinion.

Finally—and this is an answer to a question put by my noble friend Lord Lansdowne—what he called the *plenum* of the Cabinet (that is, a meeting of all the Ministers), is from time to time summoned to deal with matters on which they are all entitled to be heard. I will give two illustrations of that. The first was the question of the franchise—the Representation of the People Bill. The second has been at more than one stage the question of Ireland, obviously a question which the War Cabinet would not like to decide without knowing what all their colleagues think; and on those occasions it is always open to the Prime Minister—and he has more than once acted on the opening—to summon the entire body of Ministers.

I said just now that I was ignorant of the congestion which people seemed to think exists; and the only hint of any congestion that I have had in the speeches to which I have listened this evening was a reference by the noble Viscount to the Ministry of Health. It is true that the question of founding a Ministry of Health is not solved, but its postponement has not been due to any congestion of work in the Cabinet; it has not been due to the numbers of the Cabinet, be they too small or the reverse. It has been due simply to the fact that this is a question which raises the most acute and deep-seated differences between the various Departments concerned. It is a question which would equally take time whether you had a Cabinet of six or sixty; whether you had a War Cabinet or a Peace Cabinet. The question of Ireland, of course, is another matter of the same type. Those are questions which necessarily can be dealt with only by repeated consultation, conference, and the like, and the slow treatment of which it is really unfair to charge to the particular Cabinet system which I am concerned in explaining.

I come now, my Lords, to the suggestion of my noble friend. He advocates—and he has been followed to some extent, although not

quite, I think, to the full extent, by the two noble Marquesses, Lord Lansdowne and Lord Crewe—he advocates the setting up of two Cabinets side by side, one to deal with war alone and the other to deal with domestic questions. I personally, from such experience as I have had during the last year and a half, believe that to be an utterly impossible solution. I will tell your Lordships why. In the first place, it is simply out of the question to draw a line of division, of demarcation, between what are domestic questions and what are war questions. Nine-tenths of the questions which are commonly called domestic, which would be domestic in peace time, are war questions now, or tend to become war questions as you proceed with their discussion. I will take as illustrations agricultural policy, food production, shipping, man-power, labour—all those questions which fall, I understand, under the noble Viscount's scheme, to his Domestic Cabinet. They are all of them war questions. Not a week would pass before the Domestic Cabinet would have to send them up to the War Cabinet in order that they might be looked at from the point of view of the war. I will take one little illustration which the noble Viscount gave. He laughed at the War Cabinet because it had to give a decision on the question of racing. Is it laughable? Not a bit. The question of racing—I see Lord Chaplin eagerly awaiting what I am about to say—could not be decided by considerations of sentiment or of expediency alone; it had to be decided in its reference to the war; it had to be decided upon the advice of the Army Council; and small, trivial if you like, as that question is, certain as nine men out of ten would be to include it in the list of domestic topics, that was a war question, and it had to be decided by war considerations. I ask your Lordships to believe that the war absorbs everything into its mesh to a degree that you could hardly imagine.

Let me now give an illustration which will appeal to some of my noble friends opposite, because it relates to the Coalition Government of which they, along with myself, were members. I allude for a moment to the Dardanelles Committee of which I spoke a little while ago. I have already described the process by which the Dardanelles Committee gradually expanded into a War Committee. As such it had to take notice of shipping. Why? Because the tonnage was required for the transport of troops and of supplies. But then arose a question of food imports, because shipping was also required to meet the ordinary needs of the civil population of this country. As soon as you had to deal with that you became involved in the question of food

production in this country to take the place of imports which you were restricting from abroad. But food production cannot be successfully pursued in this country unless you have mechanical appliances—tractors and ploughs. When you get to that stage the Minister of Munitions appears upon the scene. He has complete control of steel, and he says "I want a decision of the War Cabinet as to whether I am to find steel for ploughs or aircraft or shells." Thus you see that a war question may presently slide off into what is a domestic question and then back it comes as a war question, and has to appear before the body which has the management of the war.

The second reply which I make to my noble friend's suggestion is this, that the present system, so far as my own experience goes, works smoothly, and if you had two Cabinets existing at the same time side by side—and I think this was seen by the Leader of the Opposition—I am pretty certain you would soon develop a good deal of jealousy, friction, and misunderstanding between the two, instead of the on the whole most harmonious working of the system which we have now. I find a third objection in my recollection of the Cabinet system with which many of us are familiar. It is this, that Ministers in the various Departments are hard worked, not only those in the War Cabinet alone, and I am afraid we should take a good deal of their time, as we did in the days of the old Cabinet to which I have alluded, if Departmental Ministers were required to be in constant session in the second Cabinet, listening to the proposals of others and always with the prospect in the background that the moment a question touched the war it might have to go to the War Cabinet sitting independently.

I come to what is, after all, the crowning objection to a Domestic Cabinet sitting side by side and independently of a War Cabinet. How can you have a Cabinet dealing with all these affairs on which the Prime Minister and the Leaders of the two Houses of Parliament are not to sit? The noble Marquess solves that difficulty by saying that he would have the Prime Minister on both, as President of both. I would like him to consult the present Prime Minister as to his views upon that suggestion. You are complaining that the present War Cabinet is overburdened, and now it is proposed that the principal executive officer of the country should have placed upon him the duty of presiding over, not one, but two Cabinets. . . .

One sentence only before I sit down. The noble Marquess, Lord Lansdowne, in his remarks about the old Cabinet system, indicated his view that much of it would never reappear, and that from the

new system—whether it be, broadly speaking, good or bad—in his opinion certain valuable experiences and precedents may be found for the future. I believe myself that it is profoundly true, and, whether our system survives or not in anything like the present form, I believe it will bequeath to future Governments and future Cabinets these features. I think you will find that Cabinets in the future will all be subject to a great reduction of numbers from the old and over-swollen total to which reference has been made. I do not think we shall ever have a Cabinet of twenty-two or twenty-three Ministers again. Secondly, I think the presence of other Ministers than Cabinet Ministers at the discussions will also become an inevitable feature of future Cabinet procedure. Thirdly, the preparation of an agenda in order that we may know in advance what we are going to discuss is an inevitable and essential feature of business-like procedure in any assembly in the world. Fourthly, I doubt whether it will be possible to dispense with the assistance of a secretary in future. Fifthly, I think that a record and minutes of the proceedings will have to be kept; and, lastly, I hope for a very considerable development of the system of devolution and decentralisation of Government work which I have described. In all these respects, my Lords, I think that the Government have made a substantial advance, and, whether our work be good or be bad, I think I have shown that it is not subject to some of the censures which have been placed upon it; and my own opinion is that when the war is over and the history of this time is written, it may be found that we have left a not inconsiderable mark upon the constitutional development of this country.

# XV

K. C. WHEARE

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## *The Machinery of Government*

(INAUGURAL LECTURE DELIVERED BEFORE THE  
UNIVERSITY OF OXFORD, 16 NOVEMBER, 1945.)

. . . The form of government which exists in this country to-day may be described with substantial accuracy as a parliamentary bureaucracy. It has been parliamentary for many centuries; it has been bureaucratic for little more than half a century. These two predominant elements in our government are not disconnected. They are organically joined by the institution of the Cabinet, whose members have the double function of controlling both Parliament and bureaucracy.

The parliamentary element in our machinery of government extends from the top to the bottom of its structure, from the House of Commons, through county, county borough, district, and parish councils. It embodies at least two great axioms: first, that the ultimate controlling power in the last resort over the operations of government is with the whole body of the people; second, that "talk" is an essential element to good government.

"I know not how a representative assembly can more usefully employ itself than in talk, when the subject of talk is the great public interests of the country. . . . A place where every interest and shade of opinion in the country can have its cause even passionately pleaded, in the face of the government and of all other interests and opinions, can compel them to listen, and either comply, or state clearly why they do not, is in itself, if it answered no other purpose, one of the most important political institutions that can exist anywhere, and one of the foremost benefits of free government."<sup>1</sup>

\**Public Administration*, vol. xxiv, No. 2, Summer, 1946, pp. 75-85.  
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<sup>1</sup> Mill, *Representative Government*, chapter 5.

The bureaucratic element in our government extends similarly from Whitehall to the county halls, the town halls, and the parish halls. It embodies the maxim that "every branch of public administration is a skilled business,"<sup>1</sup> and it is accepted in our system that at every stage in the transaction of public business—in finding facts upon which policy is to be formulated, in formulating policy, in passing it into law, in applying the law to particular cases, and in reviewing the operation of policy—trained officials, expert in their own branch of government, must be associated with the representatives of the whole body of the people. Parliament without bureaucracy would be halt and lame; bureaucracy without Parliament would be deaf and blind.

I believe that this system of parliamentary bureaucracy, in which both elements are organically integrated and controlled by a cabinet system, is the ideally best form of democratic government for a modern industrial state. I need hardly add that I do not mean by this that the parliamentary bureaucracy is a practicable and eligible form of government for all modern industrial states, but that where the circumstances exist in which it is practicable and eligible—and they are rarely and with difficulty obtained—it is attended with the greatest amount of beneficial consequences. Yet it is also, of all forms of government, the most difficult to work well and the most liable to decline. The balance between the parliamentary and the bureaucratic elements essential to its working is so easy to disturb, and its nature so easily becomes degenerate and perverted.

The machinery of government in a parliamentary bureaucracy must, then, be constantly under review, and never more so than at a time like the present when we emerge from a great war to undertake the formidable tasks of government in a period of reconstruction. We must regret that, so far, we have not had a document comparable to the report of Lord Haldane's Machinery of Government Committee at the close of the last war, which still illuminates the path of the student to-day. But unofficial students have investigated the subject and disturbed our minds—I mention only one, Dr. C. K. Allen's *Law and Orders*—while the House of Commons itself has set on foot an inquiry into its procedure. In the United States a similar disquiet is apparent, well expressed recently in two books, among many—Thomas K. Finletter's *Can Representative Government do the Job?* and Merlo J. Pusey's *Big Government—Can we Control it?*, not to mention such an extreme attack as Ludwig von Mises's *Bureaucracy*.

<sup>1</sup> *Ibid.*



In most discussions of the subject it is clear that the prevailing anxiety is lest the bureaucratic is overwhelming the parliamentary element in our government. Indeed, so great is the dislike of these tendencies that to use the word "bureaucracy" to describe the public service in this country is considered a partial criticism if not an insult. Yet I have chosen the word deliberately. Bureaucracy, pure and simple, is an inferior form of government. Indeed, it is almost the worst. Parliamentary bureaucracy can be a very good form of government, but it can so easily decline. That we may be reminded continually of the dangers of decline always present in this element of our government, I have retained the use of the word "bureaucracy."

These dangers are well known. "The trained official hates the rude, untrained public. He thinks that they are stupid, ignorant, reckless—that they cannot tell their own interest—that they should have the leave of the office before they do anything." Bureaucracy "tends to over-government."<sup>2</sup> Worse even than the trained official is the half-trained or untrained official, so familiar to us in war-time. And there is no one who has not experienced some example of the indolence, the incompetence, the obstruction, the arrogance, the ignorance, the unimaginativeness of some bureaucrat in the national or the local civil service. Yet with all this, which I know and admit, I believe I must say a word in defence of the bureaucracy.

To start with, let it be remembered that there are far more bureaucrats outside the government service than inside it. The bureaucrat—the administrator at his desk, the official who directs, organises, and co-ordinates, the "manager" of James Burnham's stimulating essay, *The Managerial Revolution*—is an essential element in modern society. The great insurance companies and banks, the transport companies, the fuel and power undertakings, the chemical industry, the organisations of employers and employees, all employ bureaucrats on a large scale. They must if they are to regulate their affairs. The guess has been made that by the end of the war one in every twenty-five adults in this country was a government official; I am prepared to guess that another five out of the twenty-five were bureaucrats not in the government service, but performing duties of the kind which the various grades of state bureaucrats perform. And while I am guessing I would add that it is likely that there are more bureaucrats in the City of London than in Whitehall.

<sup>2</sup> Bagchot, *The English Constitution* (World's Classics), p. 172

<sup>3</sup> C. K. Allen, *Law and Orders*, p. 203.

To say this is not to excuse the faults of government officials. It is but to say that bureaucracy is a part and an essential part of our whole social organisation; it is not a phenomenon peculiar to government activity and control. Nor are the defects of bureaucracy found only in government officials. The simple citizen who has put a simple question upon the law to his solicitor has received from that arch-bureaucrat, that embodiment of all the virtues and vices of bureaucracy, an answer which rivals in obscurity and qualification any letter which a civil servant has sent. Let it be remembered that, since the Civil Service began to use white tape,<sup>5</sup> the chief public functionary who uses red tape is the solicitor. Nor would any one who has dealt with a large economic organisation like an insurance company lack experience of those faults which are often thought to be solely exhibited by government officials. The fact is that, with the increased technical complication of modern production and with the growth of monopoly or quasi-monopoly in economic and social life, bureaucracy has grown generally and has begun to exhibit its faults generally.

And it is here that we see the reason why the State must have its bureaucracy. If the State is to be something more than a weak and inferior competitor with the other institutions in society, it must have a bureaucracy large enough and skilled enough to hold its own with, if not to control, these other institutions. For my part I believe the State must be able to control society, and if it is to do so, it must have an appropriate bureaucracy. The history of the last seventy years has seen a rapid growth of bureaucracy in all forms of social institutions in this country, not only economic. It is a development of much greater interest and importance, I believe, even than the development of a State bureaucracy. Yet it has had no detailed study. James Burnham's *The Managerial Revolution* has given us a glimpse of the fascinating field of inquiry that is there. I hope that it will be studied. None the less, the broad picture is clear. There has been admittedly a growth of State bureaucracy, but it is a growth which is consequential upon the wider and fundamental development of bureaucracy in society as a whole.

But the severest critics of governmental bureaucracy are usually ready to admit that some bureaucracy is necessary. They think there should be little of it—too little in my view. They would be inclined to say to me: "What you say about the wide extent of bureaucracy is true. But remember this: No bureaucrat outside a government depart-

<sup>5</sup> C. T. Carr, *Concerning English Administrative Law*, p. 160.

ment has anything like the power which a government official has.<sup>1</sup> There is something here. The powers to legislate which Parliament has delegated to government departments in this country are wider than anything that it has given to, say, a railway company—powers even to alter Acts of Parliament themselves. In the light of these powers the State bureaucracy is, among non-State bureaucracies, as a leviathan but as a leviathan among whales.

Yet this great leviathan, even if its task is to control great whales must itself be controlled, if our government is to be in truth a *parliamentary* bureaucracy. Nothing that I have said so far denies this; it has been intended to put the problem in proper perspective. It is time to ask now: Is our bureaucracy triumphant? Are we, in the phrase of F. von Hayek, on *The Road to Serfdom*? Or, to use less tendentious language, has the fear expressed by the Machinery of Government Committee's Report in 1918 been realized that "a more efficient public service may expose the State to the evils of bureaucracy unless the reality of parliamentary control is so enforced as to keep pace with any improvement in departmental methods"?<sup>2</sup>

The Cabinet is intended to be the principal instrument of control. Its members are chosen to control the bureaucracy because they have the confidence of the House of Commons. Their function is well established. "It is not the business of a Cabinet Minister to work his department. His business is to see that it is properly worked."<sup>3</sup> The ideal Minister is one who corrects, controls, and above all animates his department. He must be a man of sufficient intelligence, enough various knowledge, and enough miscellaneous experience to represent effectually general sense in opposition to bureaucratic sense.<sup>4</sup> That is the ideal. And it is remarkable how often we come near it.

It is well to remember that the good or very good Minister can be such only if he is served by a good or very good bureaucracy. The ideal bureaucrat in our system is not that fabulous man who can prepare an unanswerable case for or against any policy that is proposed. He is the man who can make the best case for and against a policy, who is prepared to indicate his own preference, but who encourages the Minister always to take the initiative and the responsibility for decisions. A bureaucrat who draws out responsibility and initiative from his Minister is near the ideal. Let it never be forgotten that "energy in the executive is a leading character in the definition

<sup>1</sup> p. 16.

<sup>2</sup> Bagehot, quoting Sir G. Cornwall Lewis, *op. cit.*, p. 177.

<sup>3</sup> Bagehot, *op. cit.*, p. 178.

of good government."\* and it is the greatest danger of bureaucracy that it will dissipate its own energy and exhaust or suppress or deflect the energy of its Minister. If the ideal bureaucrat is the man of constructive energy, drawing forth from his Minister or supporting in his Minister initiative and responsibility and courage, the worst bureaucrat is the man of obstructive energy who wears down his Minister with objections and routines. The cardinal sin of bureaucracy is not ignorance, not indolence, not routine, not even timidity or arrogance, but rivalling even corruption itself, energetic obstruction. Your worst bureaucrat is not an incompetent man but a man of great capacity and energy who devotes those great gifts to the obstruction of policies other than his own and to the destruction of initiative and responsibility. Few Ministers can prevail against him, and he is to be found in all grades of our State bureaucracy, national and local.

Whether individual Ministers succeed or fail in controlling their several departments, there is still the problem of Cabinet control and co-ordination of all the departments. A good Minister and a good bureaucrat may forget the existence of other departments, almost as much as a bad Minister and a bad bureaucrat. The Cabinet must supervise. But this task is not easy. Consider what a Cabinet is like. It consists of a collection of Ministers, most of whom are in charge of departments. Each department is a relatively independent organisation, it is strongly organised, its business is great, complicated and specialised. Its Minister identifies himself with it, be he strong or weak. I believe that we in Oxford can understand the nature of our central government and of the Cabinet more easily than many other people because the departments of that government are, in their independence and corporate spirit, very like our Oxford Colleges, and a Cabinet meeting is much more like a meeting of Heads of Houses with Mr. Vice-Chancellor in the chair than it is like, say, a meeting of a board of directors with the managing director in the chair. The analogy cannot be completely accurate, but it is near the truth.

It has been said that our Cabinets anyhow are too large to provide effective control. In peace time they numbered between twenty and thirty, and the number present, allowing for Ministers not in the Cabinet but summoned for special business, was usually nearer thirty than twenty. How can so large a body effectively and collectively control all government departments? The average Minister will not feel competent to criticise his colleague's affairs, and he will hope that

\* *Federalist* (Everyman), p. 357.

his colleague feels a similar diffidence. And even if it were not so, there is no time for each member of so large a body to take an interest in and discuss his colleague's department. There is much truth in this criticism. The remedy proposed is a smaller Cabinet, to consist, usually, of a few Ministers without departmental duties whose task would be to co-ordinate groups of departments, together with one or two Ministers with departmental duties.

In my view some reduction in the size of the Cabinet from the pre-war figure of between twenty and thirty is advisable, but I do not think that a really small Cabinet of from five to seven is practicable or desirable. The analogy between the crisis of war and the crisis of peace-making and reconstruction is not exact. The crisis of war demands a very small Cabinet, because decisions must be taken rapidly, secretly, and frequently. The crisis of peace involves decisions on matters, it may well be, of life and death, but they require deliberation, and they permit of discussion. Nor can it be expected that, when the strain of war is past and party politics have returned, the leaders of any party in power in the House of Commons will submit to decisions being taken on all matters of major importance by half a dozen of their number. Parties in a democratic State will not work in that way.

I believe that a Cabinet of twelve to sixteen is the best number we can choose. It could include the principal leaders of the party and the principal departments of state. Some Ministers not in the Cabinet would be summoned to meetings for particular items of business, and the total number present would come near to twenty. It would be the task of certain members of the Cabinet to co-ordinate the work of a group of departments, not usually as super-Ministers but rather as the chairmen of Cabinet committees of Ministers concerned. It is sometimes suggested that this co-ordinating work should be carried out by Ministers with no or merely nominal departmental duties. There is value in this system, but too much is often expected of it. A Minister without departmental duties is a Minister without a departmental staff, and he confronts on his co-ordinating committee a group of colleagues each one of whom is supported, if not dominated, by a highly organised department, armed to the teeth with arguments and evidence in support of its case. A Minister with great drive and skill may achieve much co-ordination, but there will be a limit to what he can do. Experience of the work of two co-ordinating Ministers, virtually without departments, illustrates this—the Minister for the

Co-ordination of Defence in the years from 1936 to 1940, and the Minister of Reconstruction in the years from 1943 to 1945.

In a Cabinet of this smaller size something more like collective responsibility can be attained. Departments can be controlled and co-ordinated; the obstructive bureaucrat or Minister can be overborne or animated; the zealous bureaucrat and Minister can be encouraged, but not too much. The great evil of departmentalism, the refusal to collaborate or co-operate, can be attacked; and that other evil of over inter-departmentalism, the tendency to collaborate and confer too much, can be curbed. There is some chance of this when a Cabinet is small enough for the majority of Ministers, at any rate, to take part in the discussion and preparation of business.

But a further criticism is heard. You may get Cabinet control of the bureaucracy, but may you not get also an alliance of Cabinet and bureaucracy against the House of Commons? Is not one characteristic of our system "Cabinet Dictatorship"? And will not a smaller Cabinet be a more effective instrument of this dictatorship? This interpretation of the working of our machinery of government is, I believe, incorrect. It is a popular misinterpretation and I will take time to correct it. If the record of the House of Commons is considered in the years of this century, it will be seen that at no time has it been a mere voting machine for the government of the day. It is true that governments have been rarely defeated. But that is not an adequate test. The test is the extent to which governments have adapted themselves to the wishes of the House and have accepted amendments proposed to them. When this record is considered, the charge of "Cabinet Dictatorship" is seen in its true proportions.

Consider first the decade before this last war. In the years from 1929 to 1931 a minority Labour government was in office and the supremacy of the House of Commons over the Cabinet was only too apparent. In 1930 a Coal Bill was greatly modified to meet the objections of the Liberal party; an Education Bill was dropped, later reintroduced in a different form, and then passed in the House only after considerable amendment; a Consumers' Council Bill was introduced, but encountered so much opposition that it was dropped. In 1931 a similar story can be told. A Trade Unions Bill suffered so many setbacks in committee that it was withdrawn; and an Electoral Reform Bill was amended.

Since the general election of 1931 the Government of this country has always had a substantial majority and it might be expected that

Cabinet control would be complete. But the facts show otherwise. In 1932 the Government left the Sunday Performances (Regulation) Bill to a free vote of the House; it was carried, but opposition in the committee stage became so strong that the Bill was dropped. In the same year the Government accepted amendments of some importance to the Wheat Bill. In 1933 concessions were made on the Budget proposals, in regard to the taxation of heavy fuel oils and the control of the Exchange Equalisation Fund; the contributions of local authorities proposed under the Unemployment Bill were reduced, and the provisions of the Newfoundland Bill were amended so that the constitution of the Dominion was suspended, not abrogated—all as the result of pressure by the House of Commons. In 1934 the Incitement to Disaffection Bill was drastically modified as a result, in part, of pressure in the Commons, and in the same year a whole set of unemployment assistance regulations proposed by the Government had to be withdrawn and amended through protests in the House. In 1935 the resignation of Sir Samuel Hoare was directly due to opposition in the House to the proposals for a settlement of the Italo-Abyssinian dispute with which he was connected; the Government of India Bill received a most critical examination in Committee of the whole House for thirty days and the Government went far to meet the views of its Conservative critics. In 1936 a Coal Mines Bill was withdrawn after introduction because it was found unacceptable to the Conservative party. In 1937 the Government took the unusual step of withdrawing a part of its Budget proposals—the National Defence Contribution; in the same year a steady agitation in the House was directed against the administration of civil aviation, and the Secretary of State for Air, who was in the Lords, later resigned. The Regency Bill, a measure of constitutional importance, was amended in important particulars on the suggestion of private members. In 1938 the Population Statistics Bill and a new Coal Mines Bill were substantially amended and a Milk Bill was withdrawn.

Nor is the record in the years of war much different: The House that was willing to pass nearly fifty Bills in a few days with hardly any discussion in the weeks of crisis before and after 3rd September, 1939, refused on 31st October, 1939, to accept the drastic regulations proposed by the Home Secretary under the Emergency Powers Act. Considerable modifications were made in the regulations—though in the case of the famous Regulation 18B they were to be shown less effective than was hoped—and the House approved the revised code

on 23rd November. Throughout the war there was the same vigilance combined with the same readiness to give the Government full powers. In 1940 the Bill to establish special war-zones courts in case of invasion was amended in an important respect, and the scope of the purchase tax was considerably limited in the discussions on the Finance Bill. Protests in the House led to an improvement in the conditions of internees, and to the curtailing of such extravagances as the Ministry of Information's "silent column." Criticisms in 1940 of the means-test provisions in the Pensions Bill led, in 1941, to their modification in a new Bill, the Determination of Needs Bill. In 1941, too, the War Damage Bill was amended. Throughout the year there was steady criticism of administration, particularly concerning production, and the appointment of a Minister of Production was pressed. Mr. Churchill resisted the proposal, but at the beginning of 1942 he accepted it. In 1942, also, a long agitation of the previous year, to increase the allowances to families of service men, was at last successful. The Government's fuel-rationing scheme was withdrawn in face of protests in the Commons. The House secured also an increase in old-age pensions and in the pay of service men, but in neither case were the increases considered satisfactory. Agitation continued, and in 1943 a further increase was made in pensions. The influence of the House was strikingly illustrated in the discussion of the Budget proposals of 1943. As originally introduced they had rejected the "Pay as you Earn" system of collecting income tax. On pressure from the House the Chancellor agreed to examine the system. He then agreed to adopt it on a limited scale; the House pressed him further, and finally he agreed to extend it to all salary earners. In 1944 the Government accepted important amendments to the House of Commons Disqualification Bill, the Town and Country Planning Bill, and the Education Bill. It is true that, on this last Bill, the House was forced, in regard to one amendment—that proposing equal pay for men and women—to eat its words. The Government's action in this case was high-handed and contrary to usage. Finally, in 1945, important amendments were accepted to the Requisitioned Land and War Works Bill, and the Family Allowances Bill, on the strong pressure of the Commons.

I have given, perforce, a mere catalogue. But it is a catalogue which could be doubled. It may be said: These are exceptions. They are exceptions, and they should be. In our system of government the Cabinet is in office because it can command the confidence of a



majority in the House of Commons. It should be exceptional, therefore, that it gives way. But there is a further consideration. Bills are framed to pass. By what amounts to a convention of our constitution most major Bills are not introduced into the House until a thorough consultation of the interests affected by the proposed legislation has been undertaken. Advisory councils are attached to many Ministries and their advice on proposed legislation is sought. No Minister and no department would be considered to be doing their work well if they introduced Bills which had not been discussed thoroughly with the major interests concerned and their objections met so far as possible. So also amendments are inserted in the draft of a Bill in *anticipation* of the criticisms of the House of Commons. All these amendments made in draft Bills in anticipation of opposition must be taken into account along with those made after the introduction of the Bill, if a just picture is to be obtained of the influence which the House of Commons has upon the Cabinet and the bureaucracy.

Against this wider background assertions of "Cabinet dictatorship" and of "the decline of legislatures" are, in my view, phrases remote from reality in our machinery of government. I believe that the House of Commons has been at least as effective in these last two decades as it has been in this last century.

To say this is not to say that the control of the House over the bureaucracy both in the legislative and administrative process is adequate. In my opinion it is necessary to make a wider use of standing committees for the consideration of Bills. My object would not be to increase the output of legislation. It is doubtful how far that is necessary. A review of the Statute Book in the years from 1919 to 1939 shows that, on the average, three Bills of major importance—excluding financial legislation—were passed each year, and I believe that record is satisfactory. In times of crisis the House is able to act with speed, as 1931 and 1939 have shown. Nor is it possible to increase output substantially and still retain adequate discussion in the House and in standing committees. What an increased use of standing committees will do is to improve the quality of the House's discussion and control of legislation. In the atmosphere of the committee room, Government and private members are ready to learn from each other and the discussion of Bills can be more informed, more responsible, more constructive. But here again too much must not be expected.

The control of the House of Commons over delegated legislation has long been criticised as inadequate or even non-existent. Powers are

conferred upon departments in terms so wide and vague, that it is difficult to see what powers of control are retained. The mere bulk of delegated legislation makes effective control by the House as a whole impossible. In the years between 1922 and 1939 on an average 1,500 Statutory Rules and Orders were made each year; between 25th July, 1939, and 1st October, 1944, no less than 8,542 Statutory Rules and Orders were made.<sup>10</sup> And not all these regulations were required to be laid before the House for approval. Of those required to be laid, many went into effect unless a negative resolution of the House was passed. It is only when an affirmative resolution is required that an opportunity must be given for the House to express its views.

It is well to emphasise that the House, when given an opportunity, has frequently criticised and secured modifications in regulations placed before it. I have mentioned its attack upon the regulations, including 18B, in October, 1939, and the amendments it secured. During the parliamentary session of 1942-43 ten prayers were moved against various regulations. During the years 1943 and 1944 there was a marked increase in the activities of certain back-bench members, of various parties, in criticising Orders. One Order, dealing with transport, was withdrawn, and a number of others were contested and in most cases substantial concessions were obtained.<sup>11</sup> On 1st June, 1945, the House declined to approve an Order relating to the Purchase Tax.

But the opportunities for this criticism are too few and the House as a whole is not a fit body to give careful consideration to complex regulations. The Committee on Ministers' Powers recommended in 1932 that a Select Committee of the House should be appointed to consider clauses in Bills providing for delegation and also the exercise of the powers so delegated. The Government resisted it consistently, but in 1944 in response to strong pressure from the Back Benches a Select Committee was established. It is too early to say yet whether the Committee will become permanent or what success it will have. What one hopes is that it would obtain, in relation to delegated legislation, that respect from the bureaucracy which it accords, in financial matters, to the proceedings and reports of the Select Committee on Public Accounts.

I have spoken so far of the method by which the parliamentary element in our machinery of government can be made effective in controlling the bureaucratic element in the making of laws. May I add

<sup>10</sup> Shannon, *Modern Law Manual for Practitioners*, p. 2.

<sup>11</sup> Allen, *Law and Orders*, p. 95.

a word on the control of administration? It is not the function of the House of Commons directly to control the administration. That is the function of the Cabinet. The Commons by their control of the Cabinet may indirectly control administration. How effective has this control become? More effective than is sometimes thought. Question-time is generally agreed to provide an opportunity for the members of the House to press Ministers on administrative questions. Departments are nervous of questions—often too nervous—and this institution of question-time undoubtedly provides one effective method by which Parliament controls the bureaucracy. And it may be added that by motions on the adjournment, by debates in committee of supply, and on the address, and, above all, by the work of the Public Accounts Committee and, in the war, the Select Committee on National Expenditure, there are considerable opportunities for criticism and control of administration. But, on a review of the whole situation, they are still inadequate. And in this sphere also it seems to me the use of committees might be extended. I do not advocate anything so formal as that suggested, in 1931, for example, by Mr. Lloyd George or Sir Horace Dawkins, then Clerk of the House—a series of established standing committees attached to groups of departments. What I suggest is a development of the informal system which usually exists in the House of Commons and which has been established in this present Parliament—the setting up of informal committees of members covering the whole range of administrative activity, to keep in touch with Ministers and with each other, and to discuss matters from time to time with departments concerned. At the present time these committees are constituted on a party basis—Labour has its dozen or so committees, the Conservatives have theirs. Already they perform valuable work in educating members and in controlling Ministers. It is doubtful whether they could be improved. I believe that joint all-party committees would be preferable, more educative both to their members and to the departments. Officials would profit by contact with these committees, and the parliamentary control of bureaucracy would be increased through the processes of discussion, exposition, and criticism.

I have been able to deal with one aspect only of the method by which bureaucracy may be controlled in our machinery of government—the control by the Cabinet and the House of Commons. Of equal importance is control by the courts of law, and concerning its effectiveness equal anxiety has been expressed. I have not the qualifications

to deal authoritatively with this subject, but I feel bound to mention that it is as much upon the courts as upon the House of Commons that the safeguarding of our democratic system of government depends. Nor have I had time to do more than mention a method of controlling bureaucracy which has developed in this country as an adjunct of Parliament—the use of advisory councils. We owe our understanding of the working and effectiveness of these bodies in greatest measure to my predecessor, Sir Arthur Salter, who instituted in 1937 a co-operative inquiry in Oxford into their use in relation to central government, an inquiry which resulted in the publication of a book entitled *Advisory Bodies* in 1940. In my view these bodies can be of the greatest value in assisting parliamentary bureaucracy to work well and they should be regarded as an essential part of our machinery of government.

There are many other aspects of my subject which I have not even mentioned and which may appear to others more important than those which I have discussed. To some the greatest need in our machinery of government is decentralisation, devolution of authority to regional parliaments upon the model of Northern Ireland; to others a reorganisation of our local government; to others the secret is found not in controlling bureaucracy but in altering its content, in changing the methods of recruitment in the national as well as in the local civil service. . . .

*Part Six*

THE PRIME MINISTER

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"Is this the wisdom of a great minister? or is it the ominous vibration of a pendulum?"

JUNIUS, in a letter written 30 May, 1769.

# XVI

W. IVOR JENNINGS

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## A. *The Formation of a Government\**

### *The Cabinet*

The Prime Minister has not merely to determine what posts he shall fill and to find persons to fill them; he must, also, determine who shall be in the Cabinet. In filling the offices he has, for the most part, determined the membership of the Cabinet. The Lord President of the Council, the Lord Privy Seal, the eight Secretaries of State, the Chancellor of the Exchequer, the Presidents of the Boards of Trade and Education, the First Lord of the Admiralty, and the Ministers of Health, Labour, and Agriculture and Fisheries, are always in the Cabinet. With himself, these make a Cabinet of eighteen persons. Disraeli in 1874 was able to govern with a Cabinet of twelve. The growing pressure of business has made such small Cabinets impossible, and twenty is now the minimum.<sup>1</sup>

Apart from the eighteen ministers mentioned above, it is usually necessary to have at least one other minister without substantial departmental duties. For this there are several reasons. The reason most commonly given for the existence of such sinecure or semi-sinecure offices as those of Lord Privy Seal and Chancellor of the Duchy of Lancaster, and for the appointment of ministers without portfolio, is that the modern Cabinet operates very largely through committees. The fact is true, but the conclusion is in large measure untrue. The members of Cabinet committees are usually departmental ministers. The Chancellor of the Exchequer, who, next to the Secretary of State for Foreign Affairs, is usually the most overworked minister, is called upon to sit on more committees than any other

\*W. Ivor Jennings, *Cabinet Government* (Cambridge, 1937). Reprinted by kind permission of the author and the publishers.

<sup>1</sup>The War Cabinet of 1914-19 and the National Cabinet of 1931 were smaller, but were due to peculiar and temporary causes.

minister. The true reasons are not so simple. First, it is necessary to place in the Cabinet every political leader of real standing, especially if he has a personal following among the members of his party. Secondly, a political leader of real character can make a nuisance of himself if he is not in the Cabinet. Whether deliberately or not, he will usually be found leading the more discontented element in the Government party. If he has views of his own, he will not always agree with Cabinet decisions, since he has not taken part in the process of compromise by which such decisions are reached. If he is in the Cabinet, he accepts decisions which he would not have reached by the exercise of his own unaided intelligence. Having taken part in the decision, he is effectively muzzled. It is true that a minister of outstanding personality and energy who is not in charge of a department can be as great a nuisance in the Cabinet as outside. But of the two evils opposition within is the less. Thirdly, there are some ministers who have no administrative capacity, but whose counsel is useful. John Bright, for instance, was a bad President of the Board of Trade, but the office of Chancellor of the Duchy of Lancaster suited him very well, because he could do no harm administratively, and in the Cabinet he represented a definite section of public and party opinion. Finally, and for much the same reason, an "elder statesman" can be of great use in the Cabinet, though he cannot be expected to undertake the burden of a large office. The first Duke of Wellington, the Marquis of Lansdowne in Aberdeen's Government and another Marquis of Lansdowne after 1915, are obvious examples.

For one or more of these reasons, the Lord Privy Seal almost always, and the Chancellor of the Duchy of Lancaster usually, are members of the Cabinet. Sometimes there is a minister without portfolio. Sometimes, too, a younger minister becomes sufficiently prominent to induce the Prime Minister to invite him into the Cabinet. The First Commissioner of Works, the Postmaster-General, and the Minister of Transport are sometimes given Cabinet rank. In the Government of 1924-9 Sir Douglas Hogg, the Attorney-General, like some of his predecessors was in the Cabinet. In view of his quasi-judicial functions and of his duties in the courts, this step did not secure universal acceptance, though Sir Douglas Hogg's political standing made it necessary. It is, however, a little difficult to see any argument against putting the Attorney-General in the Cabinet which does not apply, *a fortiori*, to the Lord Chancellor.

Strictly, it is not necessary to take the King's pleasure as to the

promotion of a minister to Cabinet rank. The Cabinet is not a legal entity, and Cabinet rank is not due to an office. A member of the Cabinet, as such, has no office. He is invited to attend by a purely informal note from the Prime Minister. For the Cabinet is merely a private meeting of the more important ministers. It is, however, the rule that Cabinet ministers should be sworn of the Council, so as to apply to them the Privy Councillor's oath. Since this involves an appointment, the King's consent must be obtained. When the King is "advised" to admit a minister to the Privy Council, it will be explained to him that the minister has been admitted to the Cabinet, and he can then make any observations he thinks fit.

### *The Change of a Prime Minister*

Unless the Prime Minister desires to dispense with a salary, he must himself take some office. For the title of Prime Minister does not belong to an office, and it carries no salary.<sup>2</sup> Usually, the Prime Minister is First Lord of the Treasury. This office gives him the Treasury patronage, places him in control of the Whips, who are junior Treasury ministers, and enables him to make use of the Treasury officials without difficulty. He takes this office and, with it, the functions of Prime Minister, as soon as he kisses hands. Logically, therefore, the retiring Prime Minister goes out of office, and the old Cabinet is dissolved.

The first consequence is that all ministerial offices are placed at the Prime Minister's disposal. This is so even if the "new" Prime Minister is the "old" Prime Minister; that is, when the Prime Minister is commissioned to form a new Government. This happened, for instance, when the Liberal Government resigned in 1915. Mr. Asquith was commissioned to form a new Government and formed a coalition. Similarly, when the Labour Government resigned in 1931, Mr. MacDonald was commissioned to form a new Government and accordingly formed the first National Government. This was a temporary Government, and, after the general election of 1931, the Government was reconstructed as the second National Government.

The offices are similarly at the new Prime Minister's disposal when the former Prime Minister dies or resigns. Usually, the new Prime Minister requests most of his colleagues to remain in their existing

<sup>2</sup> It would, however, be a simple matter to give him a salary, without office, by providing it in the Schedule to the Appropriation Act. [The Ministers of the Crown Act, 1937, gives the Prime Minister a salary of 10,000 pounds a year as Prime Minister and First Lord of the Treasury. Ed.]



offices. But, subject to all the limitations on his freedom of choice set out above, he can alter or reconstruct the Government as he pleases. On the death of Lord Palmerston in 1865 the Cabinet met and Lord Russell asked for their support, but he made some modification in the distribution of offices.<sup>3</sup> On the resignation of Lord Derby in 1868 Mr. Disraeli treated all the offices as at his disposal, and refused to recommend the continuation of Lord Chelmsford in office as Lord Chancellor, and recommended Lord Cairns.<sup>4</sup> (That is why Lord Chelmsford said that the old Government was the Derby and the new the Hoax.) Similarly, on the resignation of Campbell-Bannerman in 1908, Mr. Asquith remodelled the Cabinet to suit his own views. Among other changes, he transferred Lord Tweedmouth from the Admiralty to the Presidency of the Council and removed Lord Elgin from the Colonial Office. The latter was first informed of his dismissal by reading in the newspapers of the appointment of his successor.<sup>5</sup> In 1935 Mr. Baldwin made some changes, including the dismissal of Lord Sankey from the office of Lord Chancellor and the appointment of Mr. Malcolm MacDonald as Secretary of State for the Colonies.

It follows that, though it is usual for the Cabinet to resign, the Prime Minister can, by a personal resignation, force a dissolution of the Government. As Lord John Russell wrote to Lord Melbourne in 1841: "If the Cabinet decide to resign on your proposition they are responsible; but if you say that you are determined to resign, there is no room for deliberating, and I can only announce [to the House of Commons] that as you are determined to tender your resignation, your colleagues, including myself, had of course done the same."<sup>7</sup> In 1846 Peel advised the Cabinet to resign and informed them that, whether they resigned or not, he proposed to do so.<sup>8</sup> Mr. Gladstone has quoted this example: "As a rule, the resignation of the First Minister, as if removing the bond of cohesion in the Cabinet, has the effect of dissolving it. A conspicuous instance of this was furnished by Sir Robert Peel in 1846, when the dissolution of the Administration . . . was understood to be due not so much to a united deliberation and decision as to his initiative."<sup>9</sup> The Cabinet agreed to resign; and there

<sup>3</sup> *Letters of Queen Victoria*, 2nd Series, I, pp. 281-3.

<sup>4</sup> *Life of Disraeli*, II, pp. 326-9.

<sup>5</sup> It should be explained to non-British readers that "the Derby" and "the Oaks" are horse-races.

<sup>6</sup> *Life of Lord Oxford and Asquith*, I, p. 198.

<sup>7</sup> *Later Correspondence of Lord John Russell*, I, p. 36.

<sup>8</sup> *Letters of Queen Victoria*, 1st Series, II, pp. 94-5.

<sup>9</sup> *Gleanings*, I, p. 243.

appears to be no reason for Mr. Gladstone's characteristic qualification in the words "as a rule."

There is, of course, nothing to compel the King to ask the retiring Prime Minister to form a new Government. But, clearly, an arrangement between the King and the Prime Minister can compel the dissolution of the Government. This happened, apparently, in 1915, when Mr. Asquith asked for his colleagues' resignations in order that he might form a Coalition Government.<sup>20</sup> In 1931, on the other hand, the Cabinet instructed the Prime Minister to tender their resignations.<sup>21</sup> There is only one check upon abuse of this peculiar consequence of the Prime Minister's position. The King must not intervene in party politics. He must not, therefore, support a Prime Minister against his colleagues. Accordingly, it would be unconstitutional for the King to agree with the Prime Minister for the dissolution of the Government in order to allow the Prime Minister to override his colleagues. At the same time, it must be remembered that the royal belief in coalition is almost a family inheritance, and that proposals for a coalition, especially against extreme Cabinets, are likely to find favour.

When it is said that the appointment of a Prime Minister places all ministerial offices at his disposal, it must not be understood that all offices are immediately vacant. It means only that the King, on the Prime Minister's advice, can exercise his legal right to dismiss the holder of any office held at the pleasure of the Crown. Usually, the retiring Prime Minister takes with him the resignations of his colleagues. But they are not immediately accepted. In 1841 Lord Melbourne advised the Queen: "Your Majesty must, of course, consider us as having tendered our resignations immediately after the vote of last night, and Your Majesty will probably think it right to request us to continue to hold our offices and transact the current business until our successors are appointed."<sup>22</sup> The retiring ministers are dismissed when the new Prime Minister has secured the King's assent to his appointment. The formal method of dismissal depends on the office. The Lords of the Treasury, the First Lord of the Admiralty, the Postmaster-General and the Chancellor of the Duchy of Lancaster are dismissed by the revocation of letters patent. The Lord Chancellor, the Lord Privy Seal and the Secretaries of State surrender their seals.

<sup>20</sup> *Life of Lord Oxford and Asquith*, II, pp. 164-6; Beaverbrook, *Politicians and the War*, II, p. 214; Lloyd George, *War Memoirs*, I, pp. 223-35.

<sup>21</sup> Snowden, *Autobiography*, II, pp. 950-2.

<sup>22</sup> *Letters of Queen Victoria*, 1st Series, I, p. 379

The offices of Lord President of the Council and First Commissioner of Works are transferred by declaration in Council. No formal act is necessary in other cases.

In 1834 the Duke of Wellington took the offices of First Lord of the Treasury and Secretary of State while Sir Robert Peel was posting home from Rome, and before Peel kissed hands. The Great Seal was placed in commission. But the circumstances of the "dismissal" of Lord Melbourne's Government in that year were peculiar, and ministers normally remain in office until their successors are appointed. The transfer of offices is effected at two Councils on the same day. At the first, the retiring Cabinet ministers surrender their seals; at the second, the seals are delivered to the new Cabinet ministers and other acts done. (The revocation of letters patent and the creation of new commissions are effected by a single instrument.)

This distinction between the effect of the appointment of a Prime Minister and the actual vacation of office produces the consequences that if the new Prime Minister proposes to make no change in an office, no formal act is necessary in relation to that office. For instance, when Mr. Baldwin succeeded Mr. MacDonald in 1935, many of the ministers retained their offices and therefore did not need to be formally reappointed. Mr. Lansbury, the leader of the Opposition, challenged this process as unconstitutional. He had, however, misunderstood the situation." As Sir Herbert Samuel said:

Of course, when the Prime Minister changes, the whole Ministry changes, and it is a new Administration. But it is also, I should have thought, a matter of course that any Minister who retains the same office continues in that office. . . . Each has an understanding with the new Prime Minister, but constitutionally he does not vacate his office. . . . For example, the Secretary of State for the Dominions, who, under the previous Prime Minister, held the same office, does not, under the new Prime Minister, surrender his seals to the King, and does not receive them again from His Majesty."

Mr. Baldwin had had the precedents of 1761 (resignation of the elder Pitt), 1827 (death of Canning), 1865 (death of Palmerston), 1902 (resignation of Lord Salisbury), 1908 (resignation of Campbell-Bannerman) and 1923 (resignation of Bonar Law) examined, and found that this was the invariable practice.

What happens in fact is that when a Prime Minister resigns, the King, if he accepts the resignation, immediately sends for someone to carry on the government. Everyone places his resignation formally in the hands of whoever

<sup>13</sup> 304 H.C. Debs. 5 s., 337-49.

<sup>14</sup> *Ibid.* 349-50.

is to form the Government, so as to give him a free hand to make any changes he may think desirable; but until any one or all of those resignations are accepted the office goes on without any break at all, and no Minister receives a seal afresh or is sworn in those circumstances, unless a change is involved by a resignation having been accepted and someone else taking office.<sup>12</sup>

The only qualification to be made on this statement is that, while it is customary for the ministers, as a matter of courtesy, to offer their resignations, it is not in the least necessary. The Crown can dismiss at pleasure, and for this purpose the Prime Minister advises. Accordingly, the Prime Minister has the offices at his disposal whether or not their holders have offered their resignations.

It follows from this rule that there is a gap between the resignation of a Government and the appointment of its successor. In some cases it may be substantial, as in 1839, 1845, 1851 and 1855. The process of government must necessarily go on, and ministers must take any necessary decisions even though, as ministers, they are about to die. Those decisions can, in many cases, be reversed by their successors.<sup>13</sup> It is, however, not customary for the Cabinet to meet after a resignation except for the determination of questions consequent upon their resignation. The most notable exception occurred in 1839. The Queen and Sir Robert Peel could not agree as to the position of the Ladies of the Bedchamber. Lord Melbourne's Cabinet met again and formally advised the Queen to refuse Peel's demands. Greville said that this action was unconstitutional,<sup>14</sup> and for once Greville was right. The question of the terms on which the new Government accepts or refuses office is one for the new Government alone. At this time, there was an exaggerated and artificial notion about responsibility. Because the lawyers said that ministerial responsibility was the consequence of the rule that the monarch can do no wrong, it was thought that for every act of the Queen there must be advice. Sir Robert Peel said in 1834, for instance, that by accepting office he would become responsible for the dismissal of the Whig Government.<sup>15</sup> It is now well recognised that in forming a Government the King acts on his own responsibility. Though the retiring Prime Minister or any other person may, on request, give advice before the King has sent for the successor and that successor has accepted, the King acts henceforth on the advice of that Prime Minister and his Cabinet, if any, alone.

<sup>12</sup> 304 H.C. Deb. 5 s., 357-8.

<sup>13</sup> Actually, decisions can usually be deferred, except in matters of foreign policy where the principle of continuity operates.

<sup>14</sup> Greville, *Memoirs*, 2nd Series, I, p. 209.

<sup>15</sup> Peel, *Memoirs*, II, p. 31.

*B. The Prime Minister\***The Prime Minister's Position*

"The Prime Minister," said Mr. John Morley in 1889, "is the key stone of the Cabinet arch."<sup>1</sup> If that were all, it would be necessary first to examine the working of the Cabinet, and then to consider the functions of its *ex officio* chairman. But the Cabinet arch is a part only of a vast constitutional structure. It is, undoubtedly, the most important part. The Cabinet is the final arbiter of policy. It is in the Cabinet that the Prime Minister's pre-eminence is most obvious. Yet his position as head of the Administration is so important that it must first be considered.

According to Lord Rosebery, Sir Robert Peel was "the model of all Prime Ministers."<sup>2</sup>

It is more than doubtful (he added) if it be possible in this generation when the burdens of empire and of office have so incalculably grown, for any Prime Minister to discharge the duties of his high post with the same thoroughness or in the same spirit as Peel. To do so would demand more time and strength than any man has at his command. For Peel kept a strict supervision over every department: he seems to have been master of the business of each and all of them. He was conversant with all departmental questions, and formed and enforced opinions on them. And, though he had an able Chancellor of the Exchequer, in whom he had full confidence, he himself introduced the great Budget of 1842 and that of 1845. The War Office, the Admiralty, the Foreign Office, the administration of India and of Ireland felt his personal influence as much as the Treasury or the Board of Trade.<sup>3</sup>

The emphasis of this passage is fully justified by the documents printed in the *Peel Papers*. Yet Peel's pre-eminence was exceptional and none of his successors, not even Mr. Disraeli and Mr. Gladstone attained to the same measure of control. One element in his predominance, as Lord Rosebery suggested, was the narrow range of administrative activity. The State had not, in 1846, entered upon that interference in social and economic life that the industrial revolution had made necessary. The finance of government was comparatively simple. The practical administration of the Army was primarily in the hands of the Commander-in-Chief, not in those of the Secretary of State. The Navy was, by modern standards, a small affair. Foreign and

\*W. Ivor Jennings, *Cabinet Government*.

<sup>1</sup> Morley, *Walpole*, p. 157.

<sup>2</sup> Rosebery, *Miscellanies*, I, p. 197.

<sup>3</sup> *Ibid.*

Colonial policy involved a leisurely consideration of despatches, not a feverish interchange of telegraphic messages. The "man on the spot" in the colonies was a local dictator. India was governed primarily by the local agents of the East India Company. Even the government of Ireland was, in the main, a matter of police. Above all, Peel's personality impressed itself upon his colleagues. His Cabinet contained some able members. Sir James Graham's qualities as a politician were, perhaps, not attractive; his capacity as an administrator could not be denied. Lord Aberdeen as Foreign Secretary might be accused of pro-French bias, and his relations with *The Times* are not to be defended; yet his appointment to office smoothed all the feathers that Lord Palmerston had ruffled. The Duke of Wellington, in spite of the broken windows of 1832, held an unassailable position in public esteem. When Mr. Gladstone was moved into the Cabinet his capacity was already evident. In spite of all this, Peel dominated his Cabinet. The "principles of Sir Robert Peel" were an important element in policy long after his death. For Mr. Gladstone he remained the oracle of the Constitution.

Peel's own views as to a Prime Minister's functions were put by him to a Select Committee in 1850.

You must presume that he reads every important despatch from every Foreign Court. He cannot consult with the Secretary of State for Foreign Affairs and exercise the influence which he ought to have with respect to foreign affairs, unless he be master of everything of importance passing in that department. It is the same with respect to India. . . . In the case of Ireland and the Home Department it is the same. Then the Prime Minister has the patronage of the Crown to exercise . . . ; he has to make inquiries into the qualifications of persons who are candidates; he has to conduct the whole of the communications with the Sovereign; he has to write . . . the letters in reply to all persons of station who address themselves to him; he has to receive deputations on public business; during the sitting of Parliament he is expected to attend six or seven hours a day, while Parliament is sitting, for five or six days a week; at least, he is blamed if he is absent.\*

Mr. Gladstone's explanation differs but slightly.

The Head of the British Government is not a Grand Vizier. He has no powers, properly so-called, over his colleagues: on the rare occasions when a Cabinet determines its course by the votes of its members, his vote counts only as one of theirs. But they are appointed and dismissed by the Sovereign on his advice. In a perfectly organised administration, such for example as was that of Sir Robert Peel in 1841-6, nothing of great importance is matured, or would even be projected, in any department without his personal cognisance;

\* Report from the Select Committee on Official Salaries (1850), pp. 40-41.

and any weighty business would commonly go to him before being submitted to the Cabinet. He reports to the Sovereign its proceedings, and he also has many audiences of the august occupant of the Throne.<sup>5</sup>

Lord Morley's account is said to have been the work of Mr. Gladstone.<sup>6</sup> "Although in Cabinet all its members stand on an equal footing, speak with equal voice, and, on the rare occasions when a division is taken, are counted on the fraternal principle of one man one vote, yet the head of the Cabinet is *primus inter pares*, and occupies a position which, so long as it lasts, is one of exceptional and peculiar authority."<sup>7</sup> He then points out that, though the monarch chooses the Prime Minister, "the Crown could hardly exercise any real power either of selection or exclusion against the marked wishes of the constituencies,"<sup>8</sup> and that, though his colleagues are in some cases designated to him by public opinion and parliamentary position, and the predilections of the Sovereign have some influence, "there is more than a margin for his free exercise of choice in the persons admitted to his Cabinet, and in all cases it is for him alone to settle the distribution of posts."<sup>9</sup>

Lord Morley continued:

The flexibility of the Cabinet system allows the Prime Minister to take upon himself a power not inferior to that of a dictator, provided always that the House of Commons will stand by him. In ordinary circumstances he leaves the heads of departments to do their work in their own way. It is their duty freely and voluntarily to call him into council, on business of a certain order of importance. With the Foreign Secretary alone he is in close and continuous communication as to the business of his office. Foreign affairs must always be the matter of continuous thought in the mind of the Prime Minister. They are not continuously before the Cabinet; it has not therefore the same fulness of information as the Prime Minister; and consequently in this important department of public action, the Cabinet must for the most part, unless there be some special cause of excitement, depend upon the prudence and watchfulness of its head.<sup>10</sup>

Lord Morley added that the Prime Minister settled differences between departments, that he could, with the Sovereign's assent, call for a colleague's resignation, and that he was consulted on the appointment of all the highest posts in the service of the Crown.

Sir William Harcourt thought that Lord Morley's estimate of the powers of the Prime Minister was exaggerated. He agreed that

<sup>5</sup> Gladstone, *Gleanings*, I, pp. 242-3.

<sup>6</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 183.

<sup>7</sup> Morley, *Walpole*, p. 157.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, p. 158.

<sup>10</sup> Morley, *Walpole*, p. 158.

"though theoretically he is *primus inter pares*, he should in reality be *inter stellas luna minores*." " But he said that "in practice the thing depends very much upon the character of the man." " Lord Oxford and Asquith said the same: "the office of Prime Minister is what its holder chooses to make it."<sup>13</sup>

Personality undoubtedly plays a great part in determining the power of a Prime Minister. Peel's predominance has already been mentioned. Sir James Graham said of him: "We never had a Minister who was so truly a first Minister as he is. He makes himself felt in every department, and is really cognisant of the affairs of each. Lord Grey could not master such an amount of business. Canning could not do it. Now he is an actual Minister, and is indeed, *capax imperii*." " It may be added that neither Lord Melbourne nor Lord John Russell obtained such a supremacy. Lord Melbourne was too lazy and Lord John Russell too impetuous. Each of them, too, had in Lord Palmerston a leading subordinate whose exuberance could not be controlled. For the influence of personality rests not merely on the force of character of its possessor, but also on the force of character of those with whom he is in relation.

Palmerston himself, according to Mr. Gladstone, was a weak Prime Minister. "He said that in Peel's Cabinet, a Cabinet minister if he had a measure to bring forward consulted Peel and then the Cabinet. Nobody thought of consulting Palmerston first, but brought his measure at once to the Cabinet." " This statement must be taken with some reserve, because it was made after Gladstone's conflict with Palmerston over the budget of 1860. Palmerston told the Queen that if the Lords destroyed the Paper Duties Bill "they would perform a good public service." " It is, nevertheless, instructive to compare the budget of 1841 with that of 1860. The proposal to impose the income tax and to relax some of the import duties came from Peel. It was worked out in a series of communications between Peel and his ministers, and the resources of the several departments were utilised. The budget of 1860, which completed the work of the budget of 1841 and the Corn Laws Bill of 1846, was drawn up by Mr. Gladstone alone and was carried through the Cabinet in spite of the Prime Minister's strenuous opposition. It must again be remembered, however, that

<sup>11</sup> *Life of Sir William Harcourt*, II, p. 612

<sup>12</sup> *Ibid.*, p. 610.

<sup>13</sup> *Fifty Years of Parliament*, II, p. 185.

<sup>14</sup> *Life of Gladstone*, I, p. 248.

<sup>15</sup> *Life of Gladstone*, II, p. 35.

<sup>16</sup> *Life of the Prince Consort*, v, p. 100.



the difference was at least as much the consequence of the difference between Goulbourn and Gladstone as of the difference between Peel and Palmerston.

Of Disraeli, there are different views. Lord Salisbury was a hostile witness, but his evidence is important.

As the head of a Cabinet his fault was want of firmness. The chiefs of departments got their own way too much. The Cabinet as a whole got it too little, and this necessarily followed from having at the head of affairs a statesman whose only final political principle was that the Party must on no account be broken up, and who shrank therefore from exercising coercion on any of his subordinates. Thus it became possible that the Transvaal should be annexed—not indeed against the wish of the Cabinet, but actually without its knowledge. Lord Carnarvon wished to do it. Lord Beaconsfield was persuaded that it was an excellent thing to do; i.e., the responsible head of the Department told him, and he believed, that it was an excellent thing to do, and it was done. Again, Bartle Frere should have been recalled. . . . So thought the majority of the Cabinet, so thought Dizzy himself. But the Queen was strongly opposed to it, and Hicks Beach was strongly opposed to it; and the Prime Minister was unable to resist his Sovereign and the Colonial Secretary together. Again, it was decided in Cabinet the invasion of Afghanistan should take place through one Pass. Lytton objected. Because Lytton did, Hardy. Because Hardy did, Dizzy did; for was not Hardy at the head of the India Office? And so the plans were altered.<sup>17</sup>

It would seem that the examples do not support the generalisation. Disraeli certainly did not keep in touch with the affairs of each department, as Peel had done. No Prime Minister since Peel has been able to do so. He was therefore disposed to support the view of the head of a department against the combined wisdom of his colleagues. So great was his influence that he was able to support Lord Carnarvon, Hicks Beach and Gathorne-Hardy against the rest of the Cabinet. In respect of Bartle Frere, Hicks Beach himself regarded Lord Beaconsfield's action as indicating strength, not weakness.<sup>18</sup>

Hicks Beach, indeed, contrasted Lord Salisbury and Lord Beaconsfield.

As Prime Minister [Lord Salisbury] did not exercise the control over his colleagues, either in or out of the Cabinet, that Lord Beaconsfield did. I have known Lord Beaconsfield enforce his view on the Cabinet after all its members but one had expressed a different opinion;<sup>19</sup> Lord Salisbury frequently allowed important matters to be decided by a small majority of votes, even against his own opinion. Lord Beaconsfield kept a very watchful eye on the proceedings.

<sup>17</sup> Balfour, *Chapters of Autobiography*, pp. 113-14.

<sup>18</sup> *Life of Sir Michael Hicks Beach*, I, p. 130.

<sup>19</sup> This refers apparently to 1879, when Lord Beaconsfield supported Hicks Beach over the proposal to recall Bartle Frere.

of all his colleagues. When I was Irish Secretary in 1874, the *Daily News* had an article charging me with a new departure in Irish Education. On the next morning a letter came to Dublin from Mr. Disraeli asking me for an explanation. Lord Salisbury left his colleagues very much to themselves, unless they consulted him.<sup>20</sup>

That Disraeli could, if necessary, support his colleagues against the head of a department is shown conclusively by Lord Derby's tenure of the Foreign Office at the period of the Russo-Turkish War. Before his resignation in 1878 Lord Derby was opposed to the Government's "forward" policy, and Lord Beaconsfield was, for practical purposes, his own Foreign Secretary.<sup>21</sup> In truth, the policy was the Prime Minister's. He persuaded the Cabinet to agree, and he overruled his own Foreign Secretary. Whatever be thought of the policy and of its execution, it must be agreed that the method bears no trace of weakness.

Apart from his Palmerstonian beliefs in force and prestige, supported as they were by an almost childish delight in the colour of the Orient, Disraeli had no real policy and no desire to form one.<sup>22</sup> He was an arbiter, a strong judge, who, as Mr. Dooley said of the judges of the Supreme Court of the United States, kept his eye on the election returns. Lord Salisbury had a foreign policy, but nothing else, and did not watch public opinion. Both differed in this respect from Mr. Gladstone. He, too, interfered little in ordinary administration after 1880, and was not much concerned with foreign policy (as the Gordon episode shows). Like Disraeli, he kept his ear to the ground. But, unlike Disraeli, he considered that "heroic" measures were necessary to rally his party and to give it a majority. He therefore followed Peel's practice of initiating such measures and working them out in detail. The Irish Church Bill and the two Home Rule Bills, above all, bore the impress of his personality. While these measures were on the anvil, sparks might fly in other directions almost without his noticing them. Neither Disraeli nor Lord Salisbury was a legislator. It is true that, according to his biographer, "there are among [Lord Salisbury's] papers initialled memoranda dealing with Bills under discussion; draft clauses in his handwriting; suggestions for legislation which he is circulating for his colleagues' opinion."<sup>23</sup> But there is no evidence that either he or Disraeli actually initiated legislation.<sup>24</sup> Moreover, Lord

<sup>20</sup> *Life of Sir Michael Hicks Beach*, II, pp. 360-61.

<sup>21</sup> *Life of Disraeli*, II, pp. 997 *et seq.*

<sup>22</sup> I do not forget "*sanitas sanitatum, omnia sanitas*": the origin of the fantastic belief of the Primrose League that Disraeli was a great social reformer is set out in the *Life of Lord Norton*.

<sup>23</sup> *Life of Robert, Marquis of Salisbury*, III, p. 167.

<sup>24</sup> *Ibid.*, III, p. 168

Salisbury did not regard it as his duty to supervise the work of his colleagues.<sup>25</sup>

Mr. Gladstone's practice in respect of administration was much the same. In 1868-74, it is true, he attempted to follow Peel's example.<sup>26</sup> But he gave up the attempt in his later periods of office. His control over his Cabinet was, however, considerable. Between 1868 and 1874 his power was almost absolute. The forceful ambition of Mr. Chamberlain and the gradual realisation of the Whigs that Liberalism and Radicalism were becoming almost synonymous converted his function into one of conciliation and arbitration. The purge caused by the acceptance of the principle of Home Rule would, no doubt, have restored his hegemony. But by the time he returned to power in 1892 new fissures had opened in the Liberal landscape, and only the "Grand Old Man" prevented disruption. These fissures widened while Lord Rosebery was Prime Minister. The opposition between the "Imperialist" and the "Little England" sections of the Liberal Party became acute. The leader of the one was Prime Minister, the leader of the other the leader of the House of Commons. Rosebery, too, was concerned primarily with foreign affairs. The conditions did not enable him to control his Cabinet.

Mr. Balfour accepted a *damnosa hereditas*. His primary task was to prevent the question of tariff reform from creating an open rupture. But, after 1903, the resignations of so many of those who had led the Unionists in the earlier period of their hegemony left him with a comparatively young and inexperienced body of ministers. His predominance was then undoubted. His skill as chairman was immense. He was able to draw out the elements of agreement. His intellectual capacity enabled him, not to control ministers in their departmental work, but to give them valuable assistance whenever they consulted him. He was, therefore, consulted frequently. This is, after all, the most that a Prime Minister can do, and there is a large measure of agreement that, with the possible exception of Mr. Lloyd George, Mr. Balfour was the ablest Prime Minister of the present century.

According to Lord Esher—who was prejudiced—Sir Henry Campbell-Bannerman had no effective control, and the work of the departments was carried on practically without reference to the Prime Minister.<sup>27</sup> In truth, his health did not permit him to accept Peel's task, even if more modern conditions prevented it. His primary pur-

<sup>25</sup> *Ibid.* III, p. 169.

<sup>26</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 185, footnote.

<sup>27</sup> *Esher Papers*, II, pp. 160-61.

pose was to prevent the "Pro-Boers" and the Liberal Imperialists from seizing each other's throats. In this he was largely successful. But he could not, at the same time, intervene in departmental matters. His sound judgment was available to any minister who sought it, and it may be assumed that his comparatively inexperienced team of ministers took advantage of it.

Mr. Asquith not only had no taste for interference in administration, but also believed that it was impracticable.<sup>2</sup> As a chairman of the Cabinet, it is generally agreed—and not merely by Mr. Lloyd George—that in his later years of office he had no real control. This was particularly true after 1915, when the burden of the war and above all the personal loss which he suffered caused him to lose interest. His Coalition Government was necessarily both large and influential, since it contained the most important and experienced Conservative leaders as well as his own political subordinates, some of whom had had nine years' continuous experience of office. It is said that, when a discussion in which he was not interested was proceeding, he would proceed to write letters until the discussion appeared to have worn itself out. He would then remark, "Well, gentlemen, as we are now agreed, shall we pass on?" Whereupon it would be asked on what they were agreed, and a new discussion would arise over this question. On occasions, indeed, there would be a discussion at each end of the table, Mr. Asquith imperturbably writing his letters in the middle. This weakness was the ostensible reason for the intrigue by which he was ousted in 1916; but it is unlikely that the Conservative ministers would have assented to Mr. Lloyd George's leadership if there were no substance in the complaint.

The problems which faced Mr. Lloyd George's Government were of a peculiar nature, and the institution of the War Cabinet necessarily modified ordinary methods of government. It is admitted even by his opponents that he was quick to seize the point of a difficulty, especially if it were put to him orally. (The common statement that Mr. Lloyd George never read anything is untrue, but it is certain that he preferred to have the points put to him shortly and succinctly by word of mouth.) In the Cabinet he was in complete control, bringing out the elements of agreement in competing proposals and, naturally, emphasising those with which he himself agreed. More than any recent Prime Minister he intervened in departmental business. After 1918 he reduced his Foreign Secretary almost to the position

<sup>2</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 186.

of an Under-Secretary. His private secretariat in the "Garden Suburb" was almost a second Foreign Office. He himself saw foreign ambassadors, sometimes without notifying the real Foreign Office. The practice of the War Cabinet was carried on under the revived Cabinet system of 1919-22. Mr. Bonar Law, by revulsion, was tempted to alter conditions too much. He proposed, for instance, to abolish the Cabinet Office, though was ultimately dissuaded from carrying out his proposal.

Of the more recent Prime Ministers it is less easy to judge. There are few, if any, published documents. The common understanding of a minister's methods of operation is necessarily derived from a process of filtration which, possibly, leaves all the truth behind. But, if that common understanding be correct, nothing could be more opposed than the methods adopted by Mr. MacDonald and Mr. Baldwin respectively. The one was anxious, it is said, to read every document and master every detail. The other is reputed to believe that he is concerned only with major questions of policy, that documents ought to state these points shortly and succinctly, and that they ought not to be submitted at all unless they are of the Cabinet order of importance. It is said, further, that the natural isolation of Mr. MacDonald's mind prevented him from maintaining touch with his ministers. He therefore allowed ministers, other than the Foreign Secretary, to go their own way. Mr. Baldwin, on the other hand, is constantly accessible. It is a common practice for ministers to visit Downing Street for a short conversation. At the same time, it appears that the Prime Minister does not intervene unless his assistance is requested, and that he dislikes taking decisions on departmental questions outside the Cabinet. These views must be accepted with reserve. But, if they contain an atom of truth, they show that the office of Prime Minister is very largely what the holder makes it.

Though personality plays its part in determining the exercise of a Prime Minister's powers, the model which Peel created can no longer be followed. Departments have multiplied and, internally, have grown enormously. The vast group of the social services and the emphasis upon economic problems are new. In Peel's day, government consisted in the control of external policy of the armed forces and of internal order. The problem of Ireland has, it is true, been transferred to other hands and it now affects the British Government only as a matter of external policy.<sup>29</sup> But external policy now covers a much

<sup>29</sup> Even so, it remains with us. The present Cabinet has had a Committee on Ireland in "suspended animation" for several years.

greater variety of subjects. There are three armed forces in place of two; they are under the immediate control of the Cabinet; they are considerably stronger; and they have to prepare not for a possible conflict of professional forces, but for the eventuality of a vast European conflagration in which whole nations, including our own, may be engaged. By the side of the Home Office now stand the Ministries of Labour, Health, Agriculture and Transport, and the Board of Education. With the industrialisation of Europe and the increase of international trade, the functions of the Board of Trade have multiplied. All these changes, coupled with the creation of a swollen National Debt, have caused the work of the Treasury to burst its former narrow confines.

As Lord Rosebery said: "A Prime Minister who is the senior partner in every department as well as president of the whole, who aspires and vibrates through every part, is almost, if not quite, an impossibility. A First Minister is the most that can be hoped for, the Chairman and, on most occasions, the spokesman of that Board of Directors which is called the Cabinet; who has the initiation and guidance of large courses of public policy; but who does not, unless specifically invoked, interfere departmentally." " Lord Oxford and Asquith not only quoted this statement with approval, but added: "No Prime Minister could find time or energy for such a departmental autocracy as Peel appears to have exercised. Lord Palmerston's authority in his Cabinet (though he was to the last one of the most industrious of men) was maintained by widely different faculties and methods." " Peel himself, it should be added, had arrived at the same conclusion by the end of his last Government.<sup>2</sup> Peel, too, never had to look after a popular constituency. As Disraeli said in his remarkable character sketch: "Although forty years in Parliament, it is remarkable that Sir Robert Peel never represented a popular constituency or stood a contested election."<sup>3</sup>

Nevertheless, the Prime Minister's actual authority has tended to increase. He is not merely *primus inter pares*. He is not even, as Harcourt said, *inter stellas luna minores*. He is, rather, a sun around which planets revolve. Though he may rise to office because of the

<sup>2</sup> Quoted by Lord Oxford and Asquith, *Fifty Years of Parliament*, II, pp 185-6.

<sup>3</sup> *Ibid.* II, p. 186.

<sup>4</sup> See a letter to Mr. Arbuthnot in 1845 (*Peel Papers*, III, p. 219) and a conversation with Mr. Gladstone in 1846 (*Life of Gladstone*, I, pp. 298-300).

<sup>5</sup> Disraeli, *Lord George Bentinck*, p. 225.

King's choice or the election of his Parliamentary colleagues, he owes his majority to the choice of the electorate. Generally, a party obtains office because of a general election. A general election is, primarily, an election of a Prime Minister. The wavering voters who decide elections support neither a party nor a policy, they support a leader. Peel, with unusual prescience, realised in 1834 that this was an inevitable consequence of the first Reform Act. His famous Tamworth Manifesto was, technically, his address to the electors of Tamworth. It was, in substance, an appeal to the people. It failed in 1834, but it succeeded in 1841. Croker said that the election of 1841 was the first that was fought on the principle of voting for a Prime Minister.<sup>31</sup> It was, in fact, a contest between the Queen and Lord Melbourne on the one hand, and Sir Robert Peel on the other.

With the passage of the years, the fact became more obvious. Gladstone said of the election of 1857 that "it was not an election like that of 1784, when Pitt appealed to the question whether the Crown should be the slave of an oligarchic faction, nor like that of 1831, when Grey sought a judgment on reform, nor like that of 1852, when the issue was the expiring controversy of protection. The country was to decide not upon the Canton river, but whether it would or would not have Palmerston for Prime Minister."<sup>32</sup> The election of 1859 was again a contest between statesmen, between "those terrible old men" (to use the Queen's words), Lord Palmerston and Lord John Russell, on the one hand, and Lord Derby and Mr. Disraeli on the other.<sup>33</sup> Palmerston went to the country in 1865, it was said, with the cry of "Palmerston and no Politics" or "Palmerston and no Principles."<sup>34</sup>

With the death or retirement of the old men, elections became a personal contest between Gladstone and Disraeli. Even Lord Russell noted the change, and the Duke of Bedford observed that neither of them was fit for government.<sup>35</sup> Disraeli in 1868 realised that his election address was a manifesto to the nation, and secured Hardy's approval of it.<sup>36</sup> Gladstone in 1874 justified his announcing a new policy in his election address by referring to the Tamworth Manifesto, and secured the Cabinet's approval of large portions of it.<sup>37</sup> In 1880 he was no longer leader. But the Midlothian campaign was an onslaught

<sup>31</sup> *Peel Papers*, II, p. 475.

<sup>32</sup> *Life of Gladstone*, I, p. 564.

<sup>33</sup> *Ibid.* I p. 622.

<sup>34</sup> *Life of the Duke of Devonshire*, I, p. 61.

<sup>35</sup> *Life of Gladstone*, II, p. 229.

<sup>36</sup> *Life of Gathorne-Hardy*, I, p. 282.

<sup>37</sup> *Guedalla, The Queen and Mr. Gladstone*, I, p. 442; *Life of Gladstone*, II, pp. 485-7.

on Lord Beaconsfield, and the question which electors asked themselves was whether they wished to be governed by Lord Beaconsfield or by Mr. Gladstone. Lord Beaconsfield had appealed to them through his election address. Mr. Gladstone replied in his election address and from numerous platforms." Mr. Gladstone was preferred and became Prime Minister by choice of the people.

It was a necessary consequence that the Prime Minister should tour the country, setting forth his policy, and asking the electors to support his candidates. The Queen, as might be expected, objected to the innovation, and reproved Mr. Gladstone in 1886 for speaking outside his constituency, especially at the railway stations." Mr. Gladstone replied that he could willingly do without it: but since 1880 the leaders of the Opposition "have established a rule of what may be called popular agitation by addressing public meetings from time to time at places with which they were not connected. This method was peculiarly marked in the case of Lord Salisbury, as a peer, and this change on the part of the leader of the Opposition has induced Mr. Gladstone to deviate on this critical occasion from the rule which he had (he believes) generally or uniformly observed in former years." "Mr. Gladstone's accusation was literally correct. But, in substance, the "pilgrimages of passion" began with his own Midlothian campaign in 1880.

To-day, it is not only part of the Prime Minister's duty to his party to set out his policy in his election manifesto and to speak to vast concourses at party meetings: it is his duty, also, to send a letter in support of his candidate at every by-election and, at a general election, to speak to the electorate through the broadcasting system. An election contest is an appeal by the party leaders to the electorate. They ask the electors to support their policies; and, having done so successfully, they have a "mandate" to give effect to their proposals and a duty to keep their promises. Sometimes, indeed, they make no proposals. In 1931 Mr. MacDonald appealed for a "doctor's mandate" to do what might be necessary for financial restoration and the preservation of the country. In consequence, he was able to create a protectionist system which, till then, had always been rejected by the electors."

<sup>a</sup> *Life of Gladstone*, II, pp. 605-6 and 618.

<sup>b</sup> *Letters of Queen Victoria*, 3rd Series, I, p. 149.

<sup>c</sup> *Ibid.* 3rd Series, I, pp. 149-50.

<sup>d</sup> It is sufficiently obvious that Mr. Baldwin's personality played a large part in the election of 1935. It is thought by some that the resignation of Mr. Ramsay MacDonald in June, 1935, was arranged to that end.



The result, necessarily, is to strengthen the hands of the Prime Minister against his colleagues in the Government and in Parliament. Since he has so much personal support, he is perhaps essential, and certainly useful, to the Government. As such, he is able, within limits, to dictate policy. Even Mr. MacDonald in 1935, though without a party, was able to secure terms from his successor that his personal Parliamentary support could not alone justify. Yet, in the last resort, his power depends upon his party. For he goes to the country not as an individual but as the leader of his party. His personal prestige is one of the elements that make for party cohesion. Loyalty is one of the political virtues. His prestige is, too, one of the elements that make for party success. But, without his party, he is nothing. When Peel lost his party in 1845 he reigned on sufferance till he had passed the Corn Laws Bill, and was then immediately ejected. Mr. Gladstone returned in 1892 because he kept his party. Mr. Lloyd George, in spite of his great abilities, has never been, since 1921, a likely Prime Minister. Mr. MacDonald remained in office after 1932 only because it was considered necessary to retain, not his personal prestige, but the fiction of non-party government.

The Prime Minister's power in office depends in part on his personality, in part on his personal prestige, and in part upon his party support. But his relations with his colleagues depend also upon the substantial powers that appertain to his office. With the King's consent, he appoints and dismisses ministers. With the like consent, he exercises a wide patronage; and he has a right to be consulted on the more important appointments made by other ministers. He is constantly consulted by ministers on the major problems of their departments; and he is, usually, in particularly close contact with the Foreign Office.<sup>45</sup> Subject to appeal to the Cabinet, he settles disputes between departments. He convenes and presides over the informal meetings of ministers which decide common action by their departments. He sets up bodies, like the Committee of Imperial Defence and the Economic Advisory Council, which determine the common action of departments within their terms of reference. In particular, he presides over the Committee of Imperial Defence, which prepares plans for the co-ordination of departmental activity in the event of a war. He controls the Cabinet Secretariat and is consulted by ministers as to the matters which ought to be brought before the Cabinet. He is responsible for seeing that the departments carry out Cabinet decisions. In matters of emergency, he authorises the departments to take action

<sup>45</sup> For instance, when Germany's denunciation of the Locarno Treaty became known, Mr. Eden's first step was to leave for Chequers.

on matters which ought, if there were time, to be brought before the Cabinet. He is the channel of communication between the King and the Cabinet, though other ministers communicate with the King on matters affecting their departments, and the minister in attendance, if any, expresses general opinions. He is in direct communication with the Prime Ministers of the Dominions, and presides at Imperial Conferences. He sometimes receives foreign ambassadors, and sometimes represents the British Government at international conferences and at meetings of the Council and Assembly of the League of Nations. He receives deputations on matters of general political importance. He is leader of his own Parliamentary party and must therefore maintain contacts with his supporters in Parliament. If, as is usual, he is leader of the House of Commons, he is, subject to the determination of priority of proposals by the Cabinet, in control of the business of the House, through the Government Whips. He answers questions in Parliament on matters of general policy. He is expected to speak in general policy debates in the House of Commons. As leader of the Parliamentary party he is, generally, leader of the party outside. In that capacity, he is in charge of the central party machine and takes a prominent part in political propaganda. . . .

It is obvious that these manifold functions make the office of Prime Minister a full-time occupation. The Prime Minister is usually First Lord of the Treasury, partly because he would not otherwise possess an office under the Crown and be able to draw a salary, and partly because the patronage which he exercises is vested in the Lords of the Treasury and is exercised by the First Lord. Otherwise, the office of First Lord carries no duties. Some Prime Ministers have taken executive office either in substitution for or in addition to the office of First Lord. Pitt, Perceval and Canning provide early precedents of Prime Ministers who were also Chancellors of the Exchequer. Peel was Chancellor of the Exchequer in 1834-5. Disraeli said in 1868 that the pressure of work made the junction of the two offices impossible.<sup>44</sup> But Mr. Gladstone became Chancellor of the Exchequer after the resignation of Mr. Robert Lowe in consequence of the Post Office scandals in 1873 and he again held the office between 1880 and 1882. Mr. Baldwin retained the office for a short time after he became Prime Minister in 1923. In each case the Prime Minister was also First Lord of the Treasury. "

<sup>44</sup> *Letters of Queen Victoria*, 2nd Series, I, p. 500.

"Since both the First Lord and the Chancellor of the Exchequer are Lords Commissioners of the Treasury, there was an interesting discussion in 1873 as to whether Mr. Gladstone had accepted a new office involving re-election. See *Life of Gladstone*, II, pp. 465-72.

In 1885 Lord Salisbury was Foreign Secretary as well as Prime Minister. He proposed that Sir Stafford Northcote, as the leader of the House of Commons, should become First Lord of the Treasury. But Lord Randolph Churchill objected to having Northcote as leader, and the latter went to the House of Lords with an earldom and was placated by being made First Lord and the second minister in the Government.<sup>8</sup> Lord Salisbury's original intention was carried out when Lord Randolph Churchill resigned in 1886. Lord Salisbury again became Foreign Secretary, and Mr. W. H. Smith became First Lord of the Treasury and leader of the House of Commons. The same arrangement was made in 1895, Lord Salisbury being at the Foreign Office and Mr. Balfour being First Lord of the Treasury.<sup>9</sup> Finally, Mr. MacDonald was both First Lord of the Treasury and Foreign Secretary in 1924. In 1931-5 Mr. Baldwin was both Lord President of the Council and Lord Privy Seal, but the latter office imposes no duties.

It was settled in 1873 that when the Prime Minister took two paid offices his combined salary should not be more than 7500 pounds. But neither Mr. MacDonald in 1924 nor Mr. Baldwin in 1935 took more than the one salary.

Charles James Fox declared that the man who held the headship of the Treasury must be the most important minister because he controlled the patronage of the Crown and the Secret Service money. But that statement referred to a time when the House of Commons was controlled by bribes, pensions and "honours." The Prime Minister's control over his colleagues is derived not from any office known to the law at all, but from the office of Prime Minister, which is not known to the law. It is true that Lord Beaconsfield signed the Treaty of Berlin as Prime Minister, that letters patent of 1905 confer a precedence upon the Prime Minister as such, and that the Chequers Estate Act, 1918, refers to "the person holding the office popularly known as Prime Minister." But these are casual recognitions of a constitutional situation, not the legalisation of that situation. His powers derive from, and are limited by, constitutional conventions.

<sup>8</sup> *Life of Robert, Marquis of Salisbury*, III, pp. 139-40; for the difficulties of distribution of functions which the original scheme might have caused see *Life of Sir Stafford Northcote*, p. 358.

<sup>9</sup> *Life of Robert, Marquis of Salisbury*, III, p. 339.

## Part Seven

### THE CIVIL SERVICE

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"The disease which afflicts bureaucratic governments, and which they usually die of, is routine. They perish by the immutability of their maxims."

JOHN STUART MILL in *Representative Government*.

"Bureaucracy means letting the civil servants think."

LORD SALISBURY

*The Public Service in War and Peace\**

THE Civil Service, no less than the Navy, is a silent service. Its members are debarred from saying or writing anything in public about their work or their position. They may take no part in political activity beyond recording their votes. The names of even the most important of them—except Sir John Bradbury's—are entirely unknown. They achieve, in one respect, a degree of obscurity even deeper than that of the Navy. No one supposes that, as First Lord of the Admiralty, Mr. Balfour led our fleet into action at Jutland, or fired all our guns on that occasion; there are, it is well known, admirals, captains, gunners and others to perform these tasks. But the most detailed acts of a civilian department are by constitutional theory attributed to the Minister at its head, and are, by millions of people, seriously believed to be his personal work. His highest officials are called secretaries or clerks, and their apparent business is simply to record and communicate his decisions.

It may, therefore, be regarded as fitting that one who but yesterday belonged to the Civil Service should take this opportunity of saying something about it from an inside point of view.

The title chosen for this lecture, "The Public Service in War and in Peace," might, of course, be so widely interpreted as to include not only all the work of our Indian and Colonial Service and our diplomats abroad but also of the Navy and the Army themselves. It is not so intended here. The subject of the lecture is, first and foremost, the Civil Service in the typical departments—the Treasury, with its affiliated offices of the Inland Revenue and the Customs, the Home Office, Board of Trade, Board of Education, Local Government Board, Foreign Office, and the rest; last, but not least, the new war-time

\*Constable & Co., 1920, pp. 1-65, Reprinted by kind permission of the author, the publishers, and the editor of *The Nineteenth Century and After*.

Ministries, whether permanent—Labour, Health, Transport, Pensions; or temporary—Munitions, Shipping, National Service, Reconstruction; or, like the Ministry of Food, hovering between death and immortality. The War Office and Admiralty, in so far as they perform administrative work, are also included, though their organisation differs from that of most departments.

The phrase "Civil Service" in place of "Public Service" might have been used in the title. The wider term has been deliberately chosen because it is one of the purposes of this lecture to suggest that the old rigid demarcation between full-time permanent civil servants—working in central government departments—and other forms of public work, under municipalities, controlled public utility or trade associations, or voluntary organisations, is obsolete, and that a more flexible organisation of public service, as a whole, will be required in future.

The precise title, however, is unimportant. There could be no attempt in a single lecture to describe even summarily all that has been done during the war by the Civil Service, however narrowly defined. It is proposed simply to pick out a few salient points and main tendencies; to indicate first, briefly, the nature of the changes that have affected the Civil Service during the war; and second, to forecast the position and responsibilities of the public service of the future.

## I. CHANGES IN THE CIVIL SERVICE DURING THE WAR

The Civil Service as we knew it before the war was, like nearly everything else, revolutionised during the war. The work to be done, the general conditions under which it had to be done, and the staff employed on it, were all profoundly different from those of the days of peace. The differences led inevitably to far-reaching changes of organisation and methods. These various points will be examined in order.

### *New Work*

The work to be done by the Civil Service was entirely transformed during the war by the wide extension in the scope of government action. This extension was not merely or even mainly quantitative. The Government did not simply do more things of the same general class as before the war; it had to do different things. The government departments, which before the war were concerned merely or mainly with enforcing law and imposing conditions on the actions of private

citizens, had, during the war, gradually to take more and more of the initiative in finance and trading.

The most characteristic feature of the new administration was the development of controls affecting more or less completely all the principal trades of the country. Thus practically all the metal and chemical trades came under the Ministry of Munitions; all food, feeding stuffs, as well as animal and vegetable oils and fats, came under the Ministry of Food; shipping came under the Ministry of Shipping. The War Office controlled wool and leather; the Board of Trade controlled practically all other industries, including railways, coal, timber, cotton, mineral oils, petrol, tobacco and paper. The controls themselves varied in character. In the more important cases they involved complete responsibility by the government department concerned for the purchase, production, oversea and inland transport, and distribution of the supplies. In all cases they meant interference with the ordinary methods of demand and supply and with the adjustment of prices by economic laws.

It used often to be said that no government action could overcome economic laws and that any interference with those laws must end in disaster. Prices and wages, in particular, must be allowed to settle themselves by the operation of supply and demand. In so far as this means that no government action can abolish economic laws, which spring ultimately from the tendency of every individual, if left to himself, to sell in the dearest and buy in the cheapest market, it is obviously true. It does not follow, however, that governments cannot so act as to overcome economic laws. We have, indeed, under the stress of war, made practical discoveries in the art of government almost comparable to the immense discoveries made at the same time in the art of flying. The use of aeroplanes does not abolish the law of gravitation (that is still there, ready to take advantage of any mistake of the aviator or any deficiency in his machine), but it does overcome or neutralise the law. In the same way the controls which have been successfully carried out during the war have involved complete interference with the operation of economic laws. We have learnt how to fix prices without stopping supply or production; we have largely neutralised during the war the mere power of the purse in obtaining the essentials of life; we have governed production, prices, wages, supplies and distribution, by statutory regulations, and not by economic laws. During all this the economic laws were not abolished: they were ready to take advantage of any mistakes and did so.

The conditions under which the war-time departments worked were equally novel. The most striking differences from prewar days were negative. There was little or no financial control, and there was little or no Parliamentary control.

As to financial control, the standard was set in the early days by the Ministry of Munitions; hustle, regardless of expense, became the policy. The old rigid control of expenditure by the Treasury was necessarily abandoned, and was never replaced by any effective substitute. There has resulted, of course, the inevitable crop of alleged scandals and extravagances. Here it is worth while to record the fact that the people responsible for this have not been a special class of bureaucrats, but mainly the business men of the country in a new environment. The vice of the old-time civil servants was certainly not extravagance, and the suggestion that business men are now required to enforce economic administration in the Civil Service is wide of the mark. When the various cases of extravagance are examined it will be found almost invariably that they are due in the main not to civil servants, ordinarily so called, but to business men spending for the first time the money of other people instead of their own, and impatient of all the detailed controls—by the Treasury or by a finance branch of their own department—by which expenditure is normally checked.

As is pointed out in the pamphlet on the Civil Service issued by the Ministry of Reconstruction, the reports of the inspectors of the Treasury Committee (in each case business men as well as officials) were almost without exception strongly favourable in the case of departments which had a well-established official organisation and an appreciable percentage of trained official staff. The alleged scandals have occurred mainly elsewhere—in the emergency departments, with a minimum of the old Civil Service element.

This is said in no spirit of criticism of the business men who have helped the Government. The policy of hustle, regardless of expense, was probably in most departments the right policy. The tendency of departments dominated by the older type of civil servants not to increase their establishments was in some cases harmful; it is probable, for instance, that if the Treasury (perhaps during the war one of the hardest worked of all the departments) had employed a larger war-time staff, they could have kept better abreast of their work, and have saved money. My object here is not to criticise either class, but simply



to point out the difference of bias between the two; the civil servant is used to control, timid about development and, by training, parsimonious; the successful business man is not.

The lack of parliamentary control was equally inevitable during the war, and has had even more notable effects on the structure of the departments. Parliamentary control during the war was, to a large extent, superseded, for the very good reason that the special function of Parliament—the expression of the will of the people on large matters of policy—became unnecessary. The general policy of the country—to win the war at all costs—was settled. All other questions became questions of means, not of ends; they were at bottom questions for experts and not for parliamentary representatives. From this it followed that the ministers in charge of departments also lost one of their principal functions. In peace time, before the war, a very large part of a minister's time was necessarily absorbed in representing his department in Parliament by answering questions, introducing and passing bills, defending estimates, interviewing members and the like. He had to explain the work of his office there; in turn the feelings and criticisms of the members affected him and through him the whole department. Under the old cabinet system, moreover, he had to take a share in shaping the general policy of the Government, and was jointly responsible for all the important actions of his colleagues. A very great part of his work was thus done outside his office altogether; administration was only part, and perhaps not the most important part, of his duties. War conditions—and particularly the creation of the War Cabinet at the end of 1916—changed all this. Both the decay of Parliament and the new types of men appointed as ministers led to a very different view being taken of ministerial functions. Parliament was largely superseded by the War Cabinet, whose important members were cut off from Parliament—with the leader of the House as a liaison officer.

New ministers came in as the heads of departments, who had had no previous experience either from the parliamentary or from the departmental point of view. They were not politicians but business men. Under pre-war conditions a man usually became a minister only after a lengthy training, beginning as a parliamentary private secretary, and progressing through the stage of under-secretary to that of the full-fledged minister. Ministers were thus well broken in by long experience to departmental methods. This old course of procedure was now entirely superseded. The new ministers were in no

sense political chiefs. They had few parliamentary duties and often shirked those which they had. They did thus find themselves with time on their hands for administration, and tended in many cases to do more and more of the work that before the war would have fallen to their principal officials.

Sometimes this was an advantage, sometimes the reverse. Not all the new ministers had any aptitude for administration. Again, though direct parliamentary control was superseded, it by no means followed that in all cases public opinion was unimportant. In one particular department—the Ministry of Food—public opinion was most important. Lord Rhondda's recognition of this was one of the most striking instances of his statesmanship, and a very large factor in his success. The devotion of so much of Lord Rhondda's time to press interviews was in no sense an idle taste, though sometimes exasperating to earnest officials. He did not administer, though he could have done so. He acted like the old Head of a department, but instead of seeking contact with public opinion through Parliament, he sought and obtained it through the press. He left the work of his department to his officials. In this, however, he was somewhat of an exception in the new school of ministers. For the most part ministers of new departments became, in varying degrees, their own principal officials; there was a well-known instance of one of them endeavouring to be *all* of his officials at once. Needless to say, he did not succeed.

### *Staffs of Departments*

The government departments during the war have had to undertake quantities and types of work—particularly the conduct of trading operations—altogether new in the history of the state. The staff to do this work has also been to a very large extent new. To see this it is only necessary to consider the statistics showing the numbers employed in the government departments at various dates, say before the war, at the time of the armistice, and in August of the present year.

The total figures, as derived from the various parliamentary returns recently issued, are:—

August, 1914 .....	289,000
November, 1918 .....	426,000
March, 1919 .....	404,000
August, 1919 .....	410,000

These figures, however, give a wrong impression of the change of personnel, both during the war and after it, because they include, with all the other departments, the Post Office, which stands on quite a special footing. Before the war the Post Office accounted for nearly three-quarters of the total Civil Service; during and since the war its numbers have followed a course almost directly contrary to those of other departments. A very large proportion of the Post Office staff was released to join the forces, or called up (as reservists) during the war, and the postal service was reduced; the numbers employed fell from 209,000 in August, 1914, to 97,000 at the date of the armistice. Since then, with the demobilisation of the forces, the numbers have risen again rapidly up to and beyond the pre-war level, being 200,000 in March, and 213,000 in August. Whether or not there has been a fully corresponding increase in the services rendered to the public is perhaps a matter for consideration. For the present, it is sufficient to point out that the return of the Post Office staff from its war-time level has just about counteracted the decreases in all the other departments.

Apart from the Post Office, the numbers employed in these other departments have been as follows:—

August, 1914	80,000
November, 1918	329,000
March, 1919	203,000
August, 1919	196,000

These figures show much more clearly and fairly the changes that have taken place in the ordinary government departments. The numbers employed at the armistice were four times the pre-war numbers. In other words, the staff increased by more than 300 per cent. during the war. Since the armistice it has fallen materially, but is still 145 per cent. above pre-war level.

Even these figures do not show fully the change of personnel during the war. Of the 80,000 civil servants outside the Post Office in August, 1914, a large number, probably not less than 25,000, joined the forces, leaving 55,000 at work in the departments. That is to say, out of the staff of 329,000 employed at the date of the armistice, not more than one in every six had been in a government department before the war. The remaining five-sixths were temporary importations; business men, barristers and solicitors, professors, lecturers, journalists, authors, naval and military officers and, of course, women.

The increased employment of women and girls during the war in

government departments, as elsewhere, has indeed been one of the most marked changes of recent times. The greater part of the women of course, have been employed on routine or subordinate duties. It was in this direction that the widest extension of work took place, and naturally it was the subordinate men who were most readily spared for military service. There was also a considerable extension of responsible work for women in directions specially requiring women officers—*e.g.*, in the administration of welfare. Relatively few were employed in responsible men's posts. There have been enough of these however, and of women doing responsible women's work, to show that administrative capacity in women is not lacking. The difficulty in extending their numbers has lain rather with the general prejudice of the departments, and still more of the traders and the public with whom they had to deal.

If the figures alone, as given above, are regarded, it might appear that the original Civil Service played a relatively small part in government administration during the war. In this respect, as in others, the figures give an entirely misleading impression. As has already been stated, a large proportion of the staff imported during the war were engaged on subordinate work. The civil servants retained were naturally those who occupied relatively responsible positions, and these exercised an influence out of all proportion to their numbers.

A striking instance of this is afforded by the Ministry of Food, which was really the last of the war-time departments to grow to its full stature, and thus found itself in a peculiar difficulty in obtaining experienced civil servants for its staff. The total number of these was never more than 50 or 60 altogether, out of a staff of perhaps 8,000. This handful absorbed between them so large a proportion of the more important posts that it is probably true to say that the Ministry of Food of all the new departments most closely followed the Civil Service system of organisation, with a permanent secretary in real charge of the department, and with assistant secretaries (who were, in most cases, civil servants, and in no case experts in particular foods) in charge of the main divisions and responsible for controlling the experts who dealt with particular foods. It is, I think, important to emphasise this, because the Ministry of Food has been generally recognised by public opinion as one of the more successful departments. To suggest that this success was due to the handful of civil servants alone would, of course, be preposterous. The Ministry of Food was certainly no less active than other war-time departments in

obtaining the services of the best possible trade experts. Such special success as it did achieve, however, can and should be directly attributed to Lord Rhondda's recognition of the great value of the administrative experience of civil servants on the one hand and of specialised business experience on the other, combined in due proportions.

### *Methods and Organisation*

The changed work, staff, and conditions resulted, of course, in profound changes of organisation and methods. The nature of some of these changes has been indicated by what has been said before. They may now be set out explicitly.

First, to begin with small things, a number of departments have been quite reasonably prompt in answering letters. The old Civil Service habitually treated a fortnight as a reasonable time for replying to any letter, and had no sense of shame in taking a month or two months. The business rule is to answer the same day. Of course there are some good reasons for this difference—the questions dealt with by a government department are on an average more complicated than those of most businesses and affect more varying interests; the necessity of treating all persons alike—which, of course, does not exist in business—involves the keeping and use of more elaborate records before any answer is sent; liability to Treasury and parliamentary and press criticism makes the avoidance of blunders through hasty action more necessary. But, of course, the slowness of government departments was also due to a number of bad reasons—*e.g.*, the reference of each paper to a quite unnecessary number of persons before a reply could be sent; the reluctance of each officer to take sole responsibility and his liking to have a subordinate to break the ground for him; and, finally, a mere bad habit of always being days behind with his work. The introduction of business men has undoubtedly gone far to remove this reproach. There are many branches of the new departments which have been practically as prompt in their communications as any business firm.

The second result was a larger crop of mistakes. Business men took long to learn the need for the accuracy demanded by government departments in general correspondence, in answering parliamentary questions, and in the filing and keeping of records. A department, in view of its answerability to Parliament, must keep a written record of all stages of its transactions. These records must pass freely from one officer of the department to another, and from one department

to another if need be. The business man in the nature of the case has a totally different tradition. His transactions must often be kept from everyone else, even in his own business, and always from rival businesses. He has to go ahead, taking the risk of mistakes, putting speed before infallibility. His is the secretive individualistic attitude; the civil servant aims at complete co-operation and openness. It is open to question whether the accuracy obtained by the Civil Service is worth the delay and red tape. It is, however, inevitable so long as the public are taught by Parliament and the press to take such a totally wrong view of occasional mistakes, and to attach such vast importance to them. It was difficult, also, for the captains of industry to fall in with the parsimonious habits of the civil servant bred up under Treasury control with its leisurely scrutiny of every proposal for expenditure. They did not indeed make any serious attempt to do so.

Third, the relation of the minister and his principal officials has been in many cases transformed.

Under the constitution of the principal departments of state before the war there was, as a rule, some one official—whether known as a permanent secretary or otherwise—in administrative charge of the department as a whole, with all the other officials subordinate to him and reporting only through him to the political head. To this rule the War Office and the Admiralty were well-marked exceptions. Each had a Council of the heads of divisions within the department, who had direct access to the political head, and were in no way subject to the secretary of the department. It is significant that in these two cases parliamentary and political work was less absorbing. No doubt very important political questions as to the scale of military and naval preparations had to be decided, but these were relatively few. The political head could have more time than most departments for purely domestic work. Even in the Admiralty, however, there was a tendency, varying from time to time with the personalities concerned, for the First Sea Lord to be put into a position giving some sort of control or supervision of the others, and so to become an official head of the whole department. Conversely, of course, there was modification in the completeness with which elsewhere the other officials were subordinated to the permanent secretary, or were as a matter of practice given the privilege of submitting papers direct to the political head. As a rule, however, these modifications amounted to no more than the permission to save the permanent secretary's time by short-circuiting him on matters of no real importance. Every proposal of any importance

put up to the political chief had to come through him, and every instruction of any importance was passed down through him or given by him.

The relation between the minister, or political head, and the permanent secretary, or official head, of the department was naturally a very subtle and interesting one. It is not easy to describe in words. Probably the best explanation of it can be given by comparing it with another important relation, which is also generally regarded as a subtle and interesting one—that of husband and wife in a Victorian household. The analogy will be found to be very close.

The minister is the head of the household; all public acts (including correspondence) are done in his name, and he alone speaks and votes for the household. Formally he takes all important decisions, just as the husband decides where the family shall live, and where the boys shall be educated. But he does, or should do, all this on advice, and usually finds it very uncomfortable to disregard the advice.

Though head of the household, he is not really in regular charge of it. His business is mainly to fight for it outside; he must not be always at home. The prosperity of the department depends indeed directly on what he does outside. If he is a vigorous fighter in Parliament and in the Cabinet he will get for his department increased powers, responsibilities, work, as also pay and promotions; it will come off well in the inevitable disputes with other departments. If he is weak and not able to make a good living, nothing that the department can do and nothing that he can do inside the department will make up the deficiency. Sometimes in such cases may be observed the unnatural spectacle of the permanent secretary turning out to work for the living of the department; taking an active part in place of a silent part at Cabinet committees, and in discussions with other departments, but always with the handicap of being a mere official, just as a mere woman is always handicapped when doing the work of a man. Ministers with officials—like men with women—have an instinctive jealousy of those officials appearing at their intimate deliberations.

The business of the permanent secretary is to mind the house; to keep all its members in order; to prevent them from quarrelling and to make them do their work; to see that the minister, before he goes out to his daily toil in Cabinet or Parliament, is properly equipped with all necessary information; in the language of metaphor, that he has all his buttons on and his hat brushed. Of course, occasionally the minister is called in to keep discipline in a particularly difficult case,

as the father may be with a particularly wicked boy. Like the Victorian wife, the permanent secretary has no public life; is quite unknown outside the home; wields power by influence rather than directly. Like the Victorian husband, the minister is responsible for the acts and mistakes of the permanent secretary, and is expected to stand up for him in public and shield him from all attack. Like the Victorian wife also, the permanent secretary is all for monogamy; like men, ministers often have hankerings after polygamy, and want occasional change of society.

This is a very remarkable relation, and it is strange that it has worked so well, particularly when it is remembered that the marriage is in all cases one of arrangement, not of affection. The permanent secretary has no voice in choosing the minister, and the minister none in choosing the permanent secretary. Often the two never see one another till the day of the wedding. A divorce is as difficult as an act of Parliament.

All this is no caricature of what happened before the war. It is hardly necessary to point out how completely the position was changed in many departments during the war. Ministers did much more of their official work themselves, and were not always prepared to accept their officials ready made. They frequently preferred to appoint their own officials, establishing many controllers and directors with direct access to themselves. In some cases councils of heads of departments were substituted for a single official chief. The permanent secretary, if retained at all, became at most a chief wife. The old relation between the minister and himself became confused by the introduction of all sorts of private secretaries, personal assistants, commercial secretaries, and the like. This gave rise generally to a looser organisation and to abundant opportunities for domestic jars.

Fourth, the war-time departments have carried on a large part of their work not directly by their own officials, but by using the existing machinery of the trades with which they dealt, or forming special trade associations for the purpose. For example, in the Ministry of Food the whole of the arrangements for the purchase and control of oils and fats were conducted by associations of trades formed by the Ministry, whose transactions never entered into the accounts of the Ministry at all. There were also a butter imports committee, a wholesale meat association and so on. Thus full use was made of business methods for the conduct of business. Similar organisations of business men were established by the War Office and other depart-



ments. A full examination and description of those controls is a most important piece of research, which should certainly be undertaken at an early date. They show what is possible in the way of state interference with industry. They show an alternative between uncontrolled individualism and Whitehall officialism.

## II. THE CIVIL SERVICE IN THE FUTURE

When we turn from considering the Civil Service of the remote and the immediate past to making a picture of the Civil Service in the future, we are met by a difficulty common to most types of prophecy. Before the question as to the future of the Civil Service can be answered, we must know the answer to a number of other questions of even greater importance. The future of the Civil Service depends upon the determination of a number of questions of high policy, in particular on the extent to which the collectivist organisation of so many essential industries during the war will be maintained in peace; on the size and character of the Cabinet and its relations to Parliament; and on the number and grouping of the many departments of State. For the final determination of such questions it is necessary to await one general election, if not more. A few prophecies, however, can be made with a fair degree of confidence.

First, it seems clear that the sum total of government activity after the war will remain permanently greater than before the war.

Certain new departments, of which the most important is the Ministry of Pensions, must be permanent. The extension of labour control will also in a large degree continue. The state regulation of hours of work and of wages started during the war will never be wholly abandoned. General provision for unemployment will remain; the workmen, having once tasted security of income, will never accept a return to the old conditions. The Ministry of Ways and Communications and the Ministry of Health represent less, perhaps, new creations, and more a new grouping of old departments. Yet here, too, some permanent addition to the scope of government activity is certain. The financial position, both of the nation as a whole and of the State, will certainly give the Treasury and the revenue departments more to think about than ever before; it may safely be assumed that more people will be required to do the thinking and the administration.

All these developments—pensions, labour, health, finance—are really beyond doubt

The transition from interference with labour questions to permanent control, or nationalisation in the industrial and commercial spheres, raises more debatable issues. The case of inland transport, including railways, is probably already decided in favour of permanent control. Coal is one of the main battlefields of immediate controversy. Food will come to the issue next year or before. This is not the occasion to attempt any judgment as to how these issues should be decided. The dangers of control are obvious, and are not disposed of by pointing to certain undeniable successes of control in the war. But it is worth while to mention certain considerations which make for the possibility of a continuance of state action on a large scale.

(1) Undoubtedly not only the public, but traders of all classes have in many trades become habituated to, and in a sense dependent on, control. In the food trades, for instance, there is little or no move for freedom. The State has to supply the initiative and direction.

(2) The main immediate cause of pressure for reduction of government activities lies in the necessity of balancing state income and expenditure. This is likely to sweep away all sorts of non-productive expenditure—*e.g.*, on defence. It does not bear directly on controls—such as that of food—which can be made to pay their way without taxation in the ordinary sense.

(3) The somewhat surprising continuance into the peace of the doctrine that the making of unusually large profits is wicked, instead of being the economic duty of mankind, involves a reversal of earlier conceptions, which, if carried to its logical conclusion, hardly allows of any stop short of complete State Socialism. No doubt this logical conclusion will be perceived in time by many of those who now most actively denounce the profiteer, but the present phase of public opinion may easily last long enough to affect permanently the relations between the State, the entrepreneur and capitalist.

The staff of the ordinary government departments (excluding the Post Office) now stands at 145 per cent. above pre-war level. The increase in the cost of living is about 120 per cent. It is not suggested that one is in any way the cause of the other. But the two things have at least this in common—that no return to pre-war level is to be expected in either case. The Civil Service of the future must inevitably be greater in numbers than before the war; if the State continues its present active policy in economic questions, the tasks of the future Civil Service will not only be greater than, but in many ways quite different from, those of the peace before the war.

Second, the part that in any such extension of governmental activity must be played by the Civil Service will be one of the highest importance. The permanent civil servant will probably recover all or more than all the influence in administration that he has from time to time lost during the war. This will happen probably as the somewhat paradoxical result of a restoration of parliamentary control over the Executive Government.

Neither of the two general conditions—lack of Treasury control and lack of parliamentary control—which have so strongly affected the work and organisation of government departments during the war is likely to continue. Parliamentary government is the one definite alternative to government by the press or by direct action. The restoration of parliamentary control will indeed be perfectly consistent with the granting to departments of powers of subordinate legislation by orders much in excess of what they had before the war; without devolution of this kind, the parliamentary machine will be liable to become hopelessly blocked. But what Parliament may be expected and desired to insist on is that the Minister at the head of each department should once again become its political chief, rather than its principal administrator, and should assume as his main function the business of keeping the policy of the department in line with the wishes of Parliament. It may be safely said that the successful minister of the future will belong far more to the old type of politicians—that is, men who can get the ear of Parliament—than to the new type of business administrators. The influence of the officials within the departments will be correspondingly increased, as the minister's time is occupied elsewhere. Moreover, these officials will have to be regular paid civil servants. For a number of obvious reasons the men from business and from other professions, who have acted as temporary controllers and officials, will no longer be available. The regular Civil Service of the future will probably recover all the influence and position of pre-war days, and will wield it over a much larger sphere.

The restoration of Parliamentary control will no doubt carry with it also the restoration of financial control. The free hand given to war-time ministers and departments will be withdrawn. Clearly, however, the Treasury control of expenditure by the other departments must be more elastic and guided by more imagination than in the past. It was a commonplace of the Civil Service before the war that 100,000 pounds or 500,000 pounds or any large sum could be got out of the Treasury far more easily than an additional messenger or an additional

100 pounds to the salary of a specially deserving officer. The enthusiasm with which the Treasury fought small points was a perpetual surprise to other departments, and was only equalled by the blandness with which they gave away big ones. There was, of course, some reason in their attitude; a request for an additional officer or a rise of salary, which appeared to the particular department concerned almost trifling, might, and almost inevitably did, look to the Treasury—concerned to control all departments—like the thin end of a very serious wedge. The big sums were apt to be treated as questions of policy for which the Cabinet, and not the Treasury, was responsible. Financial control, which for the most part means Treasury control, over the spending of other departments must clearly be restored. Yet no one who has economy at heart can wish to see again Treasury control of the exact type and animated by the same spirit as before the war.

The Treasury habit of minding the pennies and letting the pounds look after themselves is quite contrary to the ordinary business attitude of giving to any responsible head of a department a considerable freedom of action within a general limit. It must clearly be modified in future for any department which undertakes trading operations. A more imaginative and flexible control will be required even for other departments. Probably the shortest cut to this will be found in amending the recruiting and training of Treasury officials. It is worth while suggesting that the Treasury should be much more largely recruited in future by taking in from other departments men who have had experience of constructive and practical administration. The bulk of the Treasury work is purely critical and is thus very bad for the brain.

This, however, is a digression, or rather an anticipation of a later point. The point to be made at present is that both parliamentary control and financial control in some form by the Treasury are certain to be restored; the former at least will increase the influence of permanent officials on administration by making more calls on the time of ministers for political and parliamentary work. The latter will indirectly have the same tendency. The art of administering under conditions of financial control by an outside body is an art which requires learning. It is foreign to the experience of business men; it is part of the technique of the regular civil servant.

Whether we look, therefore, to the probable work of the government departments in peace or to the general conditions affecting that work, the part that must be played by the permanent civil servants

of the future assumes increasing importance. It is vitally necessary to secure that the general efficiency of the service is as high as possible. It will probably be of importance to cultivate—at least for particular branches of the service—certain qualities which, though by no means absent in the past, have not generally been required of civil servants or produced in them by their training—initiative, decision, readiness to take responsibility and even risk of mistake.

To review within the limits of a single lecture all the problems that arise as to the future organisation of the Civil Service is clearly impossible. Certain suggestions of a general character may be made. These suggestions fall naturally under the two headings of the civil servant and of the department, or, putting it in another way, personnel and organisation. We have to consider, first, how to get, keep and train the best possible officers for the Civil Service; next, how to organise the department so that the work of the civil servants may be as useful as possible.

### *Personnel*

In considering how to get the most efficient personnel for the Civil Service of the future, it is natural to begin by asking in what particular qualities the civil servants of the past have been lacking. In approaching the matter in this way I am as far as possible from suggesting any admission that during the war the Civil Service has proved unequal to its tasks. On the contrary, I have no doubt that the verdict of history will be that the members of that service, in spite of a very considerable original bias against it in many quarters, have been triumphantly vindicated. They have shown all their traditional virtues of loyalty, co-operation, and hard work for low pay and no public recognition. They have given many examples of the new qualities required by unfamiliar tasks.

Nevertheless, there are certain points—departmental jealousy, lack of decision and of readiness to take responsibility, lack of initiative, and lack of humanity, or, to put it positively, a tendency to pedantry—on which criticism of the Civil Service is so generally levelled that it is worth while to consider them in some detail.

For the charge of departmental jealousy and quarrelling, it is interesting to refer to a letter from Lord Emmott, published in the *Times* a few months ago. Lord Emmott, who was head of the War Trade Department, and had seen the work of many government departments at first hand, was generally most appreciative of the abilities of permanent civil servants; but his letter laid quite surprising

stress on the frequency and intensity of departmental bickerings. Indeed, I am not sure that he did not go so far as to suggest that the second or third most important duty of civil servants was to fight with other civil servants.

No doubt in a certain number of cases disputes do arise between two departments as to which should do a particular piece of work. Each department is trying to magnify its office; there is a competition between them for increased scope. For instance, the difficulty of deciding whether the Consular Service should belong mainly to the Foreign Office or mainly to the Board of Trade has been a long-standing cause of governmental weakness. In my own experience there was a question at one time between the Board of Trade and the Board of Education as to whether the placing of juveniles in employment should be treated mainly as a labour question, and thus belong to the Board of Trade, or mainly as an educational question, and thus belong to the Board of Education. No doubt, when such questions arise they are apt to be treated by the representatives of the two departments not purely on their merits, but with a view to aggrandising their own department, and the results to the public may be unfortunate. It is, however, worth while to point out that when two civil servants compete for the same object they are only doing exactly what every business in the world is habitually doing. They are showing some of that spirit of enterprise and competition which is alleged to be lacking in civil servants, and, in fact, the results to the public are not always unfortunate. Very often when departments have this sort of competition with one another, each will display great alacrity and energy in order to justify its claim to the disputed territory. The remedy for such cases of competition lies, of course, in a proper grouping of the work of the departments, and in rapid and early decision by the ministers concerned or by the Cabinet as superior authority.

Such cases, however, in which two departments are competing merely as to which shall do a particular piece of work are not really common, and do not represent more than a small proportion of the cases of conflict or discussion between departments. Much more often what appears to the public as departmental jealousy and quarrelling is really the performance by each department of its obvious duty. The different government departments represent a number of divergent interests and must argue for them just as counsel on opposite sides in a lawsuit argue. The questions with which the Government deals are necessarily complex, far more so than those which ordinarily arise in

any particular business. For instance, an apparently simple transaction, such as the import of canned fish from Norway, might, and did during the war, raise questions affecting the Ministry of Food, the Ministry of Shipping, the Ministry of Munitions (in respect of the supply of tin plates), the Treasury (in respect of finance and the influence on exchanges), the Board of Agriculture and Fisheries, the Board of Trade (on questions of trade policy), the Foreign Office and the Colonial Office (as setting a precedent for action in regard to colonial produce); it might thus very well involve eight different departments, each of whom would have to be consulted. To let one single department act in such a case without consulting the others would merely mean chaos. Yet the process of consultation inevitably involved some delay and the possibility of conflict.

Again, so long as there are two distinct departments such as the Ministry of Food and the Board of Agriculture there must necessarily be consultation and consequent risk of difference of opinion between the officials of the departments in respect of the prices of agricultural produce and other points of agricultural policy. The officials are there to represent possible divergent interests. To blame them for disagreeing in such cases, and for maintaining their particular points of view, is very much like blaming the soldiers for the existence of a war in which they fight.

In fact, it may safely be said that, having regard to the infinite possibilities of departmental disputes resulting both from the necessary complexity of governmental questions and the unnecessary multiplication of government departments, the actual cases of departmental disputes are remarkably few. Civil servants, in fact, are not particularly disputatious. On the contrary their whole training is a training in consultation and co-operation. They grow old and grey-haired doing jobs which are half somebody else's jobs. It is the business man who is the lone hander; who, when he comes into a department, asks that he may be relieved from the necessity of consulting anyone, generally demands his own registry and establishment, and desires to refer papers only to the Minister.

To sum up, this charge of departmental jealousy and quarrelling as one of the characteristics of civil servants is mainly based upon misunderstanding. Occasionally an actual dispute in the form of a competition for a particular piece of work does arise. Most of the alleged quarrelling is no more than the necessary process of consultation between departments which represent divergent interests. There

is some inevitable overlapping between departments. There is at the moment a great deal of unnecessary overlapping, simply because the functions of the different departments are badly distributed and insufficiently defined. The remedy for such difficulties as do exist lies not with civil servants, or in any reform of civil servants, but with the Government, which alone can reduce the cases of departmental overlapping by a proper distribution of functions, and can provide, by Cabinet Committees or otherwise, the machinery for the prompt settlement of such disputes as still remain.

As to the charge of lack of humanity and pedantry, no doubt some civil servants have at some time done a good deal to justify this charge. Government work is, or can be, carried on to so very large an extent on forms as to make it very easy for the officials to lose touch with reality. The relative permanence of office also tends to make the Civil Service something of a special caste. This is only a particular instance of the tendency of all people who do highly specialised work to get into grooves. The remedy lies in bringing outside influences to bear upon the work of government departments (through advisory committees and Consumers' Councils), in the continued education of civil servants, in occasional forcible changes of work, and in shortening the average period of official life at both ends—that is to say, both by making it easier for men to enter the service for special jobs late in life, and by lowering the age at which many of them leave the service. These points will be dealt with in more detail later.

As to the charge of lack of decision and of readiness to take responsibility, it must be noted at the outset that in principle no official has any power to decide anything or any duty to take any responsibility at all. In theory everything done in a government department is done by the minister at its head, who is currently believed by a very large part of the population himself to sign all the letters from the department, to interview all the people who go there, and to approve all its circulars. In practice, of course, he does nothing of the sort. No Minister could possibly do one-thousandth of the things that he is personally supposed to do. The better the Minister the fewer of these things does he in fact do. But the principle that the Minister alone is responsible for all the acts of the department, that he must defend every one of these acts and must suffer for its mistakes, does undoubtedly make it much harder for officials to take decisions and responsibility. This, of course, leads to delay in dealing with urgent questions.



The degree to which officials can proceed in giving decisions depends, of course, upon the Minister and the public.

If a Minister wants his officials to take responsibility, it is perfectly easy for him to get them to do so (provided that they are young enough), by supporting them and defending them when their action is attacked. If, on the other hand, he makes a practice of throwing them over whenever their acts are criticised, obviously they will soon cease to act in any case without referring everything to him. This is a matter upon which the attitude of different ministers varies immensely. Some, like Lord Rhondda, approach every criticism upon a trusted official with the expectation of finding that the official is right; others, when their department is criticised, are apt to assume as their starting-point that the department is probably wrong. In this vital respect, therefore, of taking decisions, officials of any department will be, and can be, whatever the Minister makes them. and ministers like Lord Rhondda will certainly find no difficulty in getting decisions taken by their subordinates.

The ministers themselves, however, are not altogether masters in the matter. A great deal depends upon the public. If the public want government officials to take decisions rapidly, they must be prepared to be rather less humorous over occasional mistakes. The tradition that a government department is disgraced if it is not infallible is a fatal barrier to any government department doing anything quickly or decisively.

Given the right attitude on the part of ministers, and of the public, it will be perfectly possible for government officials to take decisions and responsibility as rapidly as any other class of persons. There is, however, one further condition—namely, that they should be trained to do so while young enough to learn.

It is, I think, one of the serious defects in the Civil Service organisation that in normal times it does not give real responsibility to men soon enough in life. A business man of great experience in government work recently expressed to me the view that no man would ever be capable of a really first-rate position if he had not had responsible work before he was thirty. The age perhaps is put rather low, but the principle expressed is undoubtedly sound. If men are kept on routine or subordinate work till forty or fifty, they will be incapable of effectively exercising authority at any time. This is one of the inherent weaknesses of the Civil Service. In normal departments, and in times of peace, men who have been kept back by a block in promotion for

most of their official lives are finally put into positions of responsibility when they are too old to acquire the habit of taking responsibility. Such men become the evasive pedants who justly infuriate the public.

This, of course, applies only to normal times and normal departments. In war-time, matters have in most cases been different, and some of the most responsible work of the Civil Service has been done by its youngest members.

With the return of normal times, however, the danger may return. It arises out of the lifelong character of the Civil Service career. A man can almost always stay in the Civil Service till he is 65, and he practically must stay till he is 60, having entered in most cases at least forty years before. It is probable that enquiry (and certainly it is a very interesting subject of enquiry) would show, in respect of the average length of effective career, a marked difference between the business world and the Civil Service world. A man who has made a business, though he may continue in it nominally to the end of his days, in fact tends gradually to drop out as soon as he can train his sons or his younger partners to take up the responsibility. The father who has brought his son into the business begins to go up to town first by a later train each day, then only two or three days a week, and finally only for occasional meetings. Unfortunately both for himself and for the country, the civil servant who is over 50 is not allowed to go to his office intermittently. While he stays at all—and he must stay till he is 60—he fills the whole of an office chair, and he blocks the whole of the way for his successor.

Any rearrangement of the rules of superannuation which would shorten the average tenure of a civil servant's office without diminishing its attractiveness would be a most important reform.

The present provisions as to superannuation are based upon an act of 1859—that is to say, are in effect 60 years old. The subsequent Superannuation Acts have made no important change of principle under this Act. Pensions can be granted to civil servants based upon the number of their years of service and their final salary. It is, however, an absolute condition of the pension that the civil servant should remain practically for life in the service. If he leaves before the age of 60, except for incapacity, he loses the whole of his accrued rights. He may, as a rule, stay on till 65, and is practically encouraged to do so by the fact that each year of service adds to his pension. The Superannuation Acts are based on the principle of making the

Civil Service, as far as possible, a separate permanent caste within the State.

The civil servant is given a low salary because he has the prospect of a pension. The latter is in effect deferred pay. The State saves for him so that he need not save for himself, but the State insists that the savings shall only be taken at the age of 60; the man who enters the Civil Service is heavily fined for leaving it while he has any life in him.

There are no doubt reasons for this policy of the Superannuation Act. Generally speaking, a civil servant has to learn most of the technique of his work in his office. He enters knowing little or nothing, and he may go on increasing in value as he gets older and older.

The objections to this policy, however, outweigh its advantages. On balance the policy of making the Civil Service a separate permanent caste within the State is wrong, particularly in view of the changed conditions and character of government work. The average period of service in government departments needs to be shortened, so as to reduce the average age of those who are at work and in charge. It should be made easy and not hard for the men to pass from the Civil Service to other work and vice versa. There will never be the slightest difficulty in filling up the place of a good man who goes. The Government has got and can get in the future admirable material for its service; the only problem is to make the best use of that material.

The re-examination of the principle and detail of the Superannuation Act is one of the most important practical questions for the effective organisation of the Civil Service. It is possible that the State would ultimately find it profitable to relax the age qualification as to pension altogether and allow any officer who has served, say, 10 years to obtain, on leaving, the value of his accrued rights, whatever his cause of leaving. Short of this, something might be done to discourage men from remaining in the Civil Service at advanced ages, by making the latter years of service, say after 50, not count for pension at all, while the earlier years counted more.

The last charge (that of lack of initiative) is somewhat similar to the one which has just been discussed. Of course, to a large extent the charge is based upon ignorance of how the work of a government department is really done. Anyone, for instance, who knows where the initiative came from for such measures as unemployment insurance, or, indeed, for any of the important developments of the Board of Trade

in the last ten years before the war, can only regard as ludicrous the suggestion that officials cannot and do not initiate. Here again the public are deceived by the belief that when a minister says he has framed a scheme he is speaking the truth. The scheme has, in most cases, been framed for him, and may even have been violently forced on his attention by an enthusiastic official whose name never transpires.

The inner history of the source of government measures would undoubtedly prove an astonishing document to the public that accuses civil servants of lack of initiative. At the same time I certainly do not desire to suggest that initiative is one of the outstanding characteristics of civil servants as a whole. On the contrary it is a quality which is not usually required of them, and not produced by their training. The position in this respect is exactly the same as with the qualities already discussed—decision and responsibility. The remedies are also the same.

To sum up, the main criticisms commonly made upon the Civil Service in the past are, to a very large extent, criticisms of civil servants for not showing qualities which they are, as a rule, neither required nor trained to show, and which ministers, Parliament and the public generally conspire to repress. If it is now desired to get a new Civil Service differing from the old in displaying generally and not occasionally such qualities as speed, enterprise, initiative, and readiness to decide and to take risks, the first change must be made not in the Civil Service, but in the attitude of Parliament and the public. So also the main remedy for departmental disputes lies in the proper distribution of functions and the unification of the Cabinet. All these reforms are in a sense external to the Civil Service. The previous discussion, however, does suggest certain directions in which internal reforms of the service might materially increase the efficiency and remove the old causes of reproach. The questions of methods of recruiting, salaries, and training of civil servants may now be briefly considered from this point of view. The question of superannuation has already been sufficiently discussed.

*Methods of Recruiting.*—Clearly the actual war-time methods of obtaining staff will no longer be applicable. We shall not get volunteers; we shall need to make relatively permanent departments, and cannot run the risk of jobbery.

There is nothing to suggest that the old methods of obtaining staff before the war—selection by an independent commission usually, but

by no means invariably, after competitive examination—will need any fundamental change. The old methods get excellent material.

The special conditions of the next few years, with the necessity of providing for demobilised members of the forces, will, of course, lead to a very large number of appointments being made on educational and other qualifications and interviews without formal competitive examination, and much valuable experience of this method will be obtained. It seems certain, however, that the competitive examination will remain the chief doorway into the Civil Service. It should, however, be even more widely tempered than before by recourse to special appointments at ages above the normal ages of entry, the appointments being made or approved by an independent commission. This is part of the general policy of breaking down the homogeneity of the Civil Service as a special caste, and keeping it more closely in touch with the rest of the community.

Perhaps the most important question that will arise as to the recruiting of the Civil Service in the near future will relate to the admission of women. There is no doubt that many branches of routine work—in connection with registration, filing, correspondence and accounts—which, before the war, were habitually undertaken by men can be as well or, at an equal cost, better performed by women. A permanent extension of their employment on such work seems certain. There will also no doubt be a considerable extension of the employment of responsible women officers on work for which women have special advantages—in connection with health, factory conditions, and the like. Whether they can with advantage be admitted to ordinary competitive examination on equal terms with men, with a view to employment, irrespective of sex, on general administrative work, is a far more debatable question. It arises only incidentally in this discussion, and I cannot attempt to answer it here. It may be suggested that one of the main objections urged against the employment of women—that owing to their habit of marrying they will not render such long and continuous service—should now, perhaps, rather be regarded as an argument in their favour. Excessive continuity has been the bane of many departments.

*Salaries.*—It has always been recognised that Civil Service salaries, at any rate for the more responsible work, were very low as compared with the rewards of a business career. Some difference is obviously reasonable: the advantages which the State can offer in respect of continuity, status, honours and interest of work, enabled it to get much

of its responsible work done more cheaply than it could as a business concern. There is no reason why the State should pay on the full business level; at the same time it seems hardly open to question that the present differences are out of all reason, and that unless some considerable permanent change is made in the scale of government salaries, there will be increasing difficulty in attracting men of the calibre required.

The contact between the Civil Service and the business world established during the war has undoubtedly given many civil servants an opportunity, which they did not before possess, of finding an alternative of a far more remunerative career, while it has equally taught many business men to value the qualities of the civil servants. Clearly a reconsideration of the Civil Service scale of salaries is required.

*Training.*—To a very large extent the civil servant learns his job by doing it and cannot learn it otherwise. At the same time, there is clearly room for something more in the way of the deliberate continued education of officers after they have joined the service. In this connection, as in others, education may mean two distinct things—technical and general. On the one hand it is probable that for some sections of the Civil Service the need for specialised training, amounting to technical education for their particular work, will be increasingly felt. Hitherto, for instance, the finance branches of most departments have been staffed by civil servants entering through one of the general examinations, and not required at any stage to make a special study of accountancy or possess technical qualifications; if any appreciable permanent extension of government trading takes place it will hardly be possible to dispense with something like a specialised staff for the financial work. Again, for many branches of labour administration, a scientific study of such questions as trade union law and practice, or labour legislation in this and in other countries, may well come to be regarded as almost indispensable technical qualifications.

The other meaning of education is yet more important. If we are to have an increased number and variety of bureaucrats, it is essential to keep their souls alive; to get them to see all their work from a wider standpoint and in due proportion to the rest of the world. From this point of view nearly all the teaching given at such an institution as the School of Economics is of a kind to be regarded as higher education for civil servants, and should be used more and more for that purpose. It would, I am sure, pay the State definitely to assist and encourage the younger civil servants of all grades to follow

some regular course in economics or political science and to give facilities for them to do so even in working hours.

### *Organisation*

Under this heading reference may be made to three points: the distribution of work among the different departments and their relations to one another; the internal organisation, including the relations of the various officials to each other, and to the Minister at the head; and the devolution of work to local bodies.

*Grouping of Departments.*—The first point has recently been explored by one of the Reconstruction Committees under Lord Haldane. It is hardly likely that the theoretically perfect scheme of departmental grouping suggested by that committee will be adopted in any reasonably near future. Some of the reforms are urgent. In the first place there is urgent need for some one department to consider the Civil Service as a whole, with a view both to maintaining its efficiency and to watching its interests. The Treasury have not played this part hitherto because they have been concerned merely to keep down expenditure and resist demands for fresh staff and salaries. Whether a reformed Treasury could undertake the more positive tasks of supervision, or whether some special department should be established for the purpose, is an open question. In the second place, the more acute cases of overlapping functions should be removed; they are the main reason for those departmental disputes of which so much is heard.

*Internal Organisation.*—During the war there has been in many departments a departure from the general principle of organising the whole under a single official head. The permanent secretary has tended to disappear or to lose influence and become a mere secretary in fact as well as name, in place of being an executive officer in charge of the whole department. The Minister has been both the political and the administrative head, working generally, though not invariably, with a council of divisional chiefs or controllers all directly responsible to himself.

There is a tendency for this supersession of the permanent secretary by a council to continue in peace-time. The Board of Trade, the Ministry of Labour, and the Board of Agriculture are all being organised on a council basis. This is a very interesting experiment which, if successful, will certainly alter materially the future of the Civil Service. For reasons which arise directly out of the analysis made above of the functions of ministers, my own inclination is to be

doubtful as to its success, and to question the possibility of dispensing with an official head of each main civil department of state. War-time ministers have been able themselves to be the official heads of their departments as well as the political heads, only because the latter post was largely a sinecure. The Minister had few parliamentary duties and no cabinet duties. The reasons for this were strictly temporary and arose out of war-time conditions.

If in peace the Minister is now to become again first and foremost the political head of his department, in constant attendance on Parliament and the constituencies, he will find it all but impossible to be also the domestic head. If he is further to be a member of a Cabinet discussing policy generally, he will find it quite impossible. The two or three tasks are entirely beyond one man. The difficulty cannot be got over by appointing more parliamentary secretaries, because Parliament will not endure more than a certain number of placemen. Moreover, the post of parliamentary secretary ought to be a training ground for future ministers. It is misused as a means of getting an administrator for the internal work of the department.

It is probable and desirable, therefore, that departments in future should be organised on permanent secretary rather than on council lines. This does not imply a pedantic return to the strict hierarchical system under which every single paper had to pass through the permanent secretary. He must trust his principal subordinates to decide both what they need show to him and what they need not. Nor does it exclude the establishment of regular councils, including both the permanent secretary and some of the principal divisional heads. A council with a regular and sacred hour of meeting is an excellent means of getting general questions of policy discussed from all points of view, and also a convenient device for making certain of the getting hold of the Minister to give decisions. The Ministry of Food was, in fact, organised somewhat on these lines. There was a Food Council of six or seven divisional heads with the Food Controller, Parliamentary Secretary, and Permanent Secretary, which met regularly twice a week and oftener as required, and the divisional heads in practice were constantly seeing the Food Controller. But in principle the Permanent Secretary was definitely in charge of the other officials; the agenda for the Food Council was always approved by him before circulation; and important questions were submitted only after consultation with him.

The decision of the point here raised may affect in many ways the



future of the Civil Service and the government of the country. The post of permanent secretary has been one of quite a special character and influence. The absence of such posts might make the Civil Service definitely less attractive to ambitious men. It would also diminish the continuity of administration under successive governments.

*Devolution to Local Authorities.*—Great experience has been gained during the war of the advantage, and indeed the necessity, of decentralisation, and in particular of devolving as completely as possible on local bodies the dealing with all individual cases. The Post Office and the Revenue Departments had, of course, for a long time past an extensive local organisation; that is to say, officials directly under the central department, and not under an independent local authority, were distributed throughout the country. These particular departments, however, touched the public only at points which could generally be dealt with by routine methods and which did not involve much of the human element. The Board of Trade, in the administration of Labour Exchanges and Unemployment Insurance, was perhaps the first department to have a large local staff dealing with individual members of the public on matters vitally affecting their lives and requiring much individual discrimination. During the war this example of decentralising government staffs has been widely followed by the Ministry of Munitions, the National Service Department and, most conspicuously of all, by the Ministry of Food. The success of the Ministry of Food has indeed rested largely on the strength of its local organisation. This consisted, on the one hand, of Food Commissioners for about fifteen large districts, covering between them the whole of Great Britain, and on the other of about two thousand Food Committees for local government areas. The Executive Officer of each local Food Committee was almost universally spoken of as the local Food Controller. He was generally near enough at hand to be seen personally by any aggrieved or puzzled householder; he in turn would constantly see personally the Food Commissioner or one of the Commissioner's staff; the latter made frequent visits to headquarters in London. By this means a chain of personal contact was established between the official Food Controller at Westminster and the individual citizens in every part of the country. Disputes, instead of being prolonged by correspondence, were terminated by personal interviews. At the same time, the department avoided the intolerable congestion which would have resulted from any effort to deal from a single central office with individual members of the public. It may indeed

be almost laid down as an axiom of administration that no government department which has any substantial volume or variety of business to deal with ought to write letters on individual matters from Whitehall.

The Ministry of Food organisation was somewhat special, in so far as the Food Committees, while technically independent, were financed wholly from the taxes, so that in effect they were under very direct central control. Whether an organisation of this precise form could continue permanently is open to question. What is certain is that, if the Government is in future to enter more into the lives of the ordinary citizens than it did before the war, it can only do so successfully by continuing and extending the wartime policy of devolution, either to localised staffs of the central departments, or to the *municipal authorities as such. The latter is the more probable development*; we may look forward to seeing ever-increasing and more various responsibilities thrown upon local authorities and their staffs. Their work will approximate more and more to the administrative work of government departments; similar problems will arise as to the selection, payment, terms of service, and training of the staffs.

*Administration through Trade Machinery.*—The Government during the war has conducted most of the business of the country. This was done to a very large extent not by superseding the existing business machinery, but by utilising it to drive the chariot (or perhaps one should say the automobile) of the State. The controls for which many of the departments became responsible were in effect largely exercised by specially constituted associations of traders, many of them having an independent legal personality and conducting their business in their own offices on ordinary business lines. Here, again, is a fruitful lesson for the future.

*Advisory Committees.*—It is needless to labour the part played during the war by the various advisory committees which brought directly into the departments concerned the knowledge of the subjects with which the departments were dealing. Perhaps one of the most famous of these committees was the Consumers' Council. It was sometimes irreverently referred to as the "Soviet." This title, however, was very far from representing its true character. Consisting as it did mainly of representatives of trade unions and of co-operative societies, it early adopted the constitutional role of a very efficient and watchful House of Lords, in criticising and delaying the proposed actions of the Food Council, with whom the initiation and the direct responsibility

for the work of the department rested. As a revising chamber, the Consumers' Council was extremely valuable, but its value depended essentially on the recognition that ultimate responsibility for all measures rested not with the Consumers' Council, but with the Food Controller, and also upon its proceedings being as a rule confidential. The value of advisory committees depends, indeed, upon their being advisory only, and not interfering with the direct responsibility of the Minister to control and to control alone. Subject to this precaution, it may be hoped that there will be a permanent extension of the use of such consultative bodies.

### III. CONCLUSION

It only remains in conclusion to collect and repeat some of the main results of the foregoing survey.

The government departments during the war have borne a tremendous strain, and have performed unfamiliar tasks, with generally acknowledged success. To do this they have had to import immense numbers of temporary officials, both for responsible and for routine work. But the influence of the original civil servants, though it naturally varied in the different departments, has, in nearly all cases, been out of all proportion to their numbers.

In the future the permanent Civil Service will inevitably be a larger body than before the war. It will almost certainly have new types of work to do, involving the possession of qualities—initiative, decision, readiness to take responsibility and risks, close touch with the public—which have hitherto been of minor importance. Its influence and importance will be increased through the restoration of parliamentary government and the consequent return of ministers to the position of political chiefs, spending most of their time outside their departments.

For all these reasons the future organisation of the Civil Service is a matter of the highest importance. The State cannot afford to have a Civil Service inefficient, or out of tone with popular feeling, or in danger of corruption. No fundamental change of the Civil Service seems called for, but the following points are put forward for consideration.

1. The salaries and terms of service should clearly be re-examined in the light of changed conditions and new needs. In particular the superannuation provisions of 1859, which compel or encourage men to stay in the service as late as possible in life, and so close the door

to promotion of young men to responsibility, need reconsideration.

2. The departments need better organisation:

- (a) by proper distribution of functions, so as to avoid overlapping
- (b) by the setting up of a single department—in the Treasury or elsewhere—to watch the interests and the work of the service as a whole, from the point of view of efficiency as well as economy.

3. The example of devolution to local bodies set by the Ministry of Food, the National Service Department, and others, should now be widely followed. Detailed administration from Whitehall is inevitably slow and wooden. The municipal service must be brought more closely into touch with government departments, as the other side of an extended public service.

4. The extended use of advisory bodies, such as the Consumers Council and the various trade committees attached to different government departments, in order to keep the public directly in touch with their administration, and thus to humanise their work, should be continued from war to peace. It should not, of course, in any way affect the direct authority of the Minister or his consequent responsibility to Parliament.

5. There should be systematically continued education of officers after they have joined the Civil Service. This education will be partly technical and partly general.

6. The invaluable new experience gained during the war of administration, particularly in the economic sphere, should be systematically studied, and the possibilities, limitations and dangers of State controls thoroughly examined.

7. Finally, and most important of all, the efficiency of the Civil Service and its capacity for new tasks depend essentially upon the public attitude towards it. A thoroughly strong Civil Service is in no sense inconsistent with or antagonistic to effective parliamentary control of departments. Indeed, the two things go together. So long as Parliament insists that the head of the department shall be first and foremost a Member of Parliament and a political chief directly responsible to Parliament and compelled, therefore, to enforce parliamentary views of policy upon the department, it can well have the department itself as strongly organised as possible. Democracy, if it knows its business, has no reason to fear bureaucracy.

There is no incompatibility between a strong Civil Service, subject

## XVIII

W. A. ROBSON

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### *The Report of the Committee on Ministers' Powers\**

M. BARTHELEMY, the Dean of the Faculty of Law in the University of Paris, relates that thirty years ago he was spending a week-end with the late Professor Dicey. In the course of conversation M. Barthélemy asked a question about administrative law in this country. "In England," replied Dicey, "we know nothing of administrative law; and we wish to know nothing."

This episode illustrates the attitude of mind which has characterised the political intelligentsia of Great Britain towards one of the most vital subjects of the day during the present century. The late Professor Dicey was not a legal pedant or a man of narrow outlook. He was, on the contrary, distinguished by a remarkable breadth of vision; and it was his extraordinary insight into the organic relation between law and public opinion, into the connection between constitutional law and traditional convention, which placed him high above his contemporaries as an exponent of the English system of government. But despite all his insight, Dicey suffered from one immense delusion until almost the end of his life. He believed that in England the rule of law is supreme, and that under it "every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen."<sup>1</sup> He believed that there was nothing to be found in England even remotely resembling the system of *droit administratif* in France, whereby wrongful acts alleged to have been committed by public officials in the course of their duty are tried by special administrative

\*The *Political Quarterly*, vol. III, 1932, pp. 346-64. Reprinted by kind permission of the author and the publishers. A new edition of Professor Robson's *Justice and Administrative Law*, containing his most recent views on the whole subject, will be published shortly by Stevens.

<sup>1</sup>*Law of the Constitution*, 8th. Ed., p. 189.

courts. In contrasting the French system with our own he described it as one in which the state is given exceptional and extensive privileges: a misreading of the position in France almost as complete as that famous misreading of the English Constitution which occurs in Montesquieu's *Esprit des Lois* (Ch. 6, Book xi.).

In a very narrow sense Dicey was right in declaring that in England there is no precise equivalent to the French system. But in proving that he proved too much; and his accuracy over a small matter obscured the larger truth. In exorcising from the British Constitution all doctrines having even the most remote connection with the hated *droit administratif*, he at the same time excommunicated from the field of his vision a series of administrative institutions which, while peculiar to the English polity, are impossible to reconcile with the constitutional principles which he had announced. As each year passed, Dicey's *Law of the Constitution* found increasing favour with the governing classes both in England and throughout the Empire. The suggestion it contained, that in England the Rule of Law and Liberty prevail, whereas the barbarians of the continent have perforce to endure all the misery and oppression of a lawless tyranny imposed by a privileged state, brought unction to the soul even when it was most clearly at variance with the facts. The work became the standard text book for students of law and politics at the older universities, at the Inns of Court, at the solicitors' law schools. It matured into a classic; and finally became almost part of the Constitution itself. It is not too much to say that "Dicey on the Constitution" dominated political and legal thought among educated Englishmen at home and abroad for more than thirty years. Yet with each succeeding edition the phenomena it ignored grew more insistent both in numbers and in strength; until at last its author, near the end of his long life, gave voice to the unquiet doubts which had at last come upon him.<sup>2</sup>

It is probably true to say that the acquisition by departments of state of legislative and judicial powers has proceeded more easily and more rapidly during the past half-century by reason of the fact that scarcely anyone was aware of what was occurring, than would otherwise have been the case. It was not until several years after the war of 1914-18, when the advent of the Defence of the Realm Act had made people conscious of the extreme lengths to which the hegemony of the executive had been pushed, that systematic enquiry began to

<sup>2</sup> See the article he wrote entitled, *The Development of Administrative Law in England* "Law Quarterly Review," Vol. xxxi., p. 148.

be made here and there into the position which had arisen. The judges commenced to introduce caustic observations into their judgments in cases where Ministers of the Crown were officially concerned. Lawyers began to denounce "the bureaucrats." And in 1929 the Lord Chief Justice took the unusual step of publishing a series of newspaper articles, afterwards issued in book form under the title *The New Despotism*, in which he made a violent and undisguised attack upon the Civil Service.

There is, Lord Hewart pointed out, a persistent influence at work which, whatever the motives or intentions that support it, undoubtedly has the effect of placing a large and increasing field of departmental authority and activity beyond the reach of the ordinary law. Thus, what he called a despotic power was being produced which places government departments above the sovereignty of Parliament and beyond the jurisdiction of the courts. He then remarked that the growth of the system of delegating legislative power to government departments had proceeded side by side with a great increase in the number of public officials, and suggested that it was "the officials in the departments concerned who initiate the legislation by which the arbitrary powers are conferred upon them."<sup>3</sup> Thus, in short, Parliament is hoodwinked by the Cabinet, the Cabinet is directed by the officials, and the officials are guilty of a vast conspiracy to deprive the commonwealth of the hard-earned constitutional liberties which have been won through centuries of strife and sacrifice.

This simple denunciation won immediate support in the press, on the platform and in Parliament. It is not too much to say that Lord Hewart's attitude represents 99 per cent. of the opinion of the bench, the bar and the solicitors' profession. The reason, of which they are entirely unconscious, is interesting. An opposition has for long existed in Britain between the idea of "law" and the idea of "government." This is a heritage from the conflict in the seventeenth century between, on the one side, a sovereign claiming to rule by divine right and to exercise an undisputed prerogative in all matters of government, and on the other side a nation claiming a supreme law to which even the sovereign should be subject. That struggle between King and Commons has become transformed in our own day into a conflict between the Executive on the one hand and the Judiciary and the legal profession on the other. The lawyers still regard themselves as champions

<sup>3</sup> "The New Despotism," p. 52.

of the popular cause; but there can be little doubt that the great departments of state administering or supervising public health, public education, pension schemes, unemployment and health insurance, housing and all the other modern social services, are not only essential to the well-being of the great mass of the people, but also the most significant expressions of democracy in our time. Considerations of this kind, however, could scarcely be expected to weigh with the predominantly upper middle-class, Forsytic and conservative legal mind.

What may be accounted an influence of some importance is the injury to the livelihood and prestige of the legal profession threatened by the new development. Just as the rank and file of the medical profession have displayed for decades an uncompromising hostility towards the public health movement and the modern science of preventive medicine; just as in the sixteenth century the practitioners of the Common Law Courts fought desperately to avert the shifting of the living law to the King's Council, to the Court of Requests, the Court of Chancery and the Star Chamber<sup>4</sup>—all of them what we should now call Administrative Tribunals—so to-day it requires no great effort of the mind or will to enable a lawyer or a judge to persuade himself that a development which removes disputes from the courts, which will provide a mode of adjudication wherein the practising lawyer has but little part, in which a rival technique and a new jurisdiction will outstrip the waning popularity of the established courts, is a Machiavellian tendency which the public good requires to be stamped out like an evil pest.

This was the setting in which the Donoughmore Committee on Ministerial Powers was appointed in 1929. It is worthy of note that although the Committee was set up by the Lord Chancellor of a labour government, the personnel of the Committee was almost exactly what might have been expected from a conservative ministry. Out of the 17 members originally appointed, six are eminent practising barristers or solicitors, and another two are lawyers of highly conservative views—a majority of the entire Committee. Three of the remaining members are conservative ex-ministers; and the only persons from whom progressive ideas might reasonably be expected were Sir John Anderson, Professor Laski and three labour members of Parliament. A reforming Lord Chancellor appears to be an impossibility at the present time.

<sup>4</sup> Cf. Roscoe Pound: "The Spirit of the Common Law," p. 73.



The terms of reference are of great significance. In them the Committee is directed to consider the powers exercised by or under the direction of (or by persons or bodies appointed specially by) Ministers of the Crown by way of (a) delegated legislation and (b) judicial or quasi-judicial decision, "and to report what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the Law." Here we have the curious spectacle of the conclusions at which the Committee is expected to arrive being embodied in its terms of reference. The Committee started life with the dead hand of Dicey lying frozen on its neck.

## II

All things considered, the Committee has done a far better piece of work than might have been expected in view of the unpropitious circumstances attending its birth.

The Report<sup>5</sup> starts by observing that in the British Constitution there is no such thing as the absolute separation of legislative, executive and judicial powers. In practice it is inevitable that they should overlap. Formal denial is thus given at the outset to that doctrine of the separation of powers which has for generations confused the minds of men both at home and abroad. The divine right of powers to be separated, insisted upon so strongly in the constitutional law of the United States, and ignored so flagrantly in constitutional practice, springs at bottom from the attitude of suspicion and hostility towards government which was well justified in the days when the rulers consisted of a sovereign and a small group of self-interested noblemen and royal favourites, but is utterly unsuited to the efficient conduct of government in the modern democratic state, when what is required is not a system of checks and balances to stultify the effectiveness of each organ of government, but a co-operative effort between all the powers of the state directed towards the common welfare.

It has been suggested, the Committee states, that the practice of delegating legislative and judicial powers to administrative organs is bad, and should be forthwith abandoned. This, however, is not the Committee's own view, nor that of most persons who have considered the problem. Delegation is inevitable to-day. But apart from its inevitability, "We see nothing to justify any lowering of the country's high opinion of its Civil Service or any reflection on its sense of justice, or any ground for a belief that our constitutional

<sup>5</sup> Cmd. 4060./1932. 2/6 net. H.M. Stationery Office.

machinery is developing in directions which are fundamentally wrong." What is needed, in fact, is a series of safeguards against possible abuse. If the right precautions are taken, the Committee expressly declares, "there is no ground for public fear." With these preliminary observations the grisly spectre of executive tyranny is banished to the theatrical property-room from which it was so unwisely permitted to wander, and the sensational phrases used to describe it are shown to be little more than journalistic devices for misleading the ignorant. The suggestion that the statutory provisions conferring powers on the departments are due directly or indirectly to an attempt on the part of civil servants to secure arbitrary power for themselves is disposed of as being "unsupported by the smallest shred of evidence."

The Report describes at some length the enormous variety of delegated legislation which now exists; the diverse procedures which are prescribed; and the haphazard way in which such safeguards as laying before Parliament and antecedent publicity are sometimes required and sometimes omitted. In all these matters the Committee seeks to introduce a measure of systematisation and rationalisation. Nomenclature is to be simplified, the Rules Publication Act should be amended, the practice of departmental consultation with interests affected should be pursued, the method of appending explanatory notes to rules or regulations extended, and a uniform procedure in regard to laying regulations before Parliament adopted. The improved drafting of delegated legislation should be secured either by enlarging the staff of the Parliamentary Counsel's office or by providing the departments with properly-qualified draftsmen.

All this relates to the exercise by ministers of their legislative functions. The principles which should guide Parliament in delegating such functions are also laid down. The normal type of delegated legislation is marked by two characteristics: first, the limits of the power conferred are so clearly defined by statute as to be plainly known to Parliament, the executive, the public and the judiciary. Second, the powers delegated do not include power to legislate on matters of principle, to impose taxation, or to amend Acts of Parliament. The exceptional type involves not only power to do all these things, but the delegated powers confer so wide a discretion on a minister that it is almost impossible to know what limit Parliament intended to impose; and control by the courts is in some instances expressly excluded. It is worth noticing that the most conspicuous examples of

these abnormal types have occurred within the past year, *e.g.*, the Gold Standard (Amendment) Act, 1931, the National Economy Act, 1931, the Foodstuffs (Prevention and Exploitation) Act, 1931, the Horticultural Products (Emergency Customs Duties) Act, 1931, and the Import Duties Act, 1932. The Committee utters a warning that exceptional measures should be reserved for exceptional emergencies; and recommends that Parliament should not depart from the normal into the exceptional type of delegated legislation without special need, nor without conscious consideration of the special grounds on which the need is said to be founded. The so-called Henry VIII. Clause, by which a dispensing power is given to a minister to modify the provisions of a statute, should never be employed except for the sole purpose of bringing an Act into operation, and should be subject to a time limit of one year for the period of its operation.

Most important of all is the proposal to set up a small Standing Committee of each House of Parliament for the dual purpose of considering and reporting on every Bill containing a proposal to confer law-making power on a minister, and of scrutinising every rule and regulation made by a department in the exercise of delegated legislative power.<sup>4</sup> These Committees would be required to consider the form only and not the merits of a Bill submitted to them. They would report on its form, and state whether it contained any exceptional features from a constitutional point of view. In particular, the Committees would enquire whether the limits of the powers conferred on the executive were clearly defined; whether any power to legislate on matters of principle, or to impose a tax, were involved; whether immunity from challenge in the courts were asked for in respect of any regulation to be made; whether any clause of the Henry VIII. type were inserted; and finally, whether the proposals contained in the Bill in this connection were properly and adequately explained by the minister in an explanatory memorandum which is to accompany all such measures in future.

These recommendations appear to combine practical commonsense with theoretical wisdom. They avoid the danger of attempting to lay down inflexible dogmas to guide the orthodox for all eternity, while at the same time they are based on recognisable principles. They distinguish between the normal and the abnormal; they embody the indispensable feature of perpetual scrutiny by members of the legis-

<sup>4</sup>[A sessional select committee of the House of Commons on Statutory Rules and Orders has been appointed since the session of 1943-4 to fulfil this function. Ed.]

lature; they observe the need for expert assistance to aid the Parliamentary Committees in their task; they emphasise the importance of good drafting, publicity, uniformity of procedure and rationalisation of method. They endeavour to make Parliament more conscious of what it is doing or about to do than to persuade it to accept self-denying penances in the future. Inevitably, there are obvious doubts which arise in connection with some of the recommendations. One wonders, for instance, how a single Committee of each House will manage to cover the whole vast field of delegated legislation without missing the significance of many of the statutory rules and orders. One questions the ability of the Committees to report on form while avoiding judgment on the substance. But these and similar criticisms are purely hypothetical. Taken as a whole, the recommendations of the Committee on delegated legislation seem to be exceedingly good.

### III

The second half of the Report, dealing with "Judicial or Quasi-Judicial Decision," covers a field which presents problems that are harder to grasp intellectually and more difficult to solve from a practical point of view.

"The supremacy or rule of the law of the land," we are told, is a recognised principle of the English Constitution." The Committee accepts the exposition of this rule of law given by Dicey, who declared it to have with us three different meanings. First, it means (according to this exposition), the absolute supremacy of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative or even of wide discretionary authority on the part of the Government. It means, second, equality before the law, or "the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts." Thirdly, it means that our constitutional law is not the source but the consequence of the rights of the individual as defined and enforced by the courts."

The first of these conditions is so manifestly remote from the state of affairs which has existed at any rate for the past century that it is obviously untrue in any large sense. Every government possesses, and must possess, "wide discretionary authority"; and the importance of the prerogative can scarcely be over-emphasised in England of all countries, where the entire field of foreign affairs, to take only one instance, falls within its scope. But it is the second condition

which is of chief significance in connection with the present discussion. (The third condition is not of particular moment).

The doctrine that all classes in this country are subject equally to the ordinary law of the land, administered by the ordinary courts of law, can be maintained only if at the same time it is admitted that "the ordinary law of the land" makes such colossal distinctions between administrative departments of government and private individuals that the former carry on their activities under what is virtually a special code or dispensation. The immunity of the Crown from liability in tort, which applies not merely to the ministers and departments of state, but extends right down the hierarchy to such relatively humble figures as a borough constable, has now become so glaring an instance of state privilege that even the blindest advocates of the orthodox theory are compelled to denounce it as an "anomaly"; and the present Report goes out of its way, and even outside its terms of reference, to commend a Bill to fill "this lacuna in the rule of law." But quite apart from this notorious scandal, there are a whole series of other privileges given to the executive in the courts of law: by statutory measures such as the Public Authorities Protection Act; by common law doctrines founded on ancient prejudices, such as non-feasance, whereby a public authority cannot be made liable for damages for the nonfulfilment of a public duty, even though injury results to one or more citizens; by the self-limitation of the courts of law, which impels them to refuse to investigate entire fields of executive action; by the archaic forms of procedure which have usually to be adopted whenever the activity of the Government is questioned in the courts of law.

The net result of all this is twofold. In the first place, there is almost no equality before the law, as between government and citizen, in the ordinary courts of justice, for the simple reason that a special body of law and procedure applies exclusively to public authorities. In the second place this body of law operates so as to deprive the citizen of a remedy against the state in nearly all the cases where he most requires it, and at the same time enables the most important administrative decisions to escape any shadow of review by the courts of law.

[The Crown Proceedings Bill, at present before the House of Commons, is designed to abolish the special position of the Crown in litigation and to make it (i.e., the Government Departments), liable to prosecution in the courts. Ed.]

The English legal system has, in fact, shown the most remarkable incapacity to expand in accordance with the needs of the modern state. The liability of the individual official for wrongdoing committed in the course of his duty, on which so much praise has been bestowed by English writers, is essentially a relic from past centuries when government was in the hands of a few known, prominent independent and substantial persons called Public Officers, who were in no way responsible to ministers or elected legislatures or councils.\* Such a doctrine is utterly unsuited to the twentieth-century state, in which the Public Officer has been superseded by armies of anonymous and obscure civil servants acting directly under the orders of their superiors, who are ultimately responsible to an elected body. The exclusive liability of the individual officer is a doctrine typical of a highly individual common law. It is of decreasing value to-day, and is small recompense for an irresponsible state. The doctrine has been abandoned, in whole or in part, by the more intelligent legal systems on the Continent.

English jurists have, unfortunately, for the most part been so pre-occupied with the mote in the eye of the executive that they have failed to notice the beam in their own. Their concern at the judicial functions acquired by administrative departments has dominated the discussion of public law questions for the past decade and has diverted the attention of both lawyers and the general public from the defects of the courts of justice as instruments for controlling, wisely and effectively, the relations between the citizen and the state.

#### IV

With these considerations in mind, we can now turn to the section of the Report dealing with the judicial powers of ministers.

For more than half-a-century Parliament has made a practice of conferring, with increasing frequency, judicial powers on ministers of state. The legislation relating to public health, education, local

\* An interesting passage on this subject occurs in an excellent monograph recently published entitled, *Responsible Bureaucracy: A study of the Swiss Civil Service* by Carl Joachim Friedrich and Taylor Cole (Harvard University Press, 1932): "Because of the peculiar conditions under which English government developed, there is a widespread belief in English-speaking countries to the effect that a clear line of distinction can and must be drawn between political responsibility of the government enforceable through Cabinet responsibility or general elections on the one hand and personal responsibility of the agents of the Government, the civil servant (or servants of the Crown), enforceable through the courts. Such a distinction, which historically speaking is a feudal heritage, is totally inadmissible under modern conditions." p. 5.

government, health insurance, unemployment insurance, pensions and other social services is teeming with provisions in which disputes between administrative authorities and householders, parents, employers, insured persons, approved societies, doctors, druggists, and other sections of the community are determined, not by the courts of law but by departments of state or by administrative tribunals appointed by ministers of the Crown. This tendency was not the result of a well-thought out constitutional principle. It was haphazard and sporadic and unsystematic. Yet it was not, on the other hand, due to a fit of absent mindedness. Parliament did not merely overlook the courts of law. But the possibility of setting up new organs of adjudication which would do the work more rapidly, more cheaply, more efficiently than the ordinary courts; which would possess greater technical knowledge and fewer prejudices against government; which would give greater heed to the social interests involved and show less solicitude for private property rights; which would decide the dispute with a conscious effort at furthering the social policy embodied in the legislation: this prospect offered solid advantages which no doubt induced Parliament to extend the administrative jurisdiction of government departments so as to include judicial functions affecting the social services. In doing so Parliament was only repeating a process which had happened again and again in the history not only of England but of many civilised countries.

The Committee thus came to be faced with a *fait accompli*. Broadly speaking, three courses were open to it. It could (in theory at least) have recommended a return to the eighteenth-century position, illustrated by the Lord Chief Justice when he expressed the hope that "the worst of the offending sections" in Acts of Parliament be repealed or amended. It could have accepted the proposals which I put forward to rationalise and institutionalise the administrative jurisdiction in a boldly-conceived system of administrative courts separated to a large extent from the ordinary routine of departmental administration and free from indirect ministerial interference. Or thirdly, it could accept the patchwork quilt of ill-constructed tribunals which at present exists, and endeavour to remedy some of their more obvious defects.

It is this last-named alternative which the Committee has adopted. The Report contains no recommendations which drastically disturb the existing structure, nor is it suggested that in practice any injustice or hardship has resulted from the present arrangements. Indeed the

Committee explicitly declares that "there is nothing radically wrong about the existing practice of Parliament in permitting the exercise of judicial and quasi-judicial powers by Ministers and of judicial power by Ministerial Tribunals." There are, however, a number of proposals intended to safeguard the interests of the citizen. Thus, every party to a dispute should be given an opportunity to state his case, and also of knowing the case which he has to meet. Every minister or administrative tribunal should be required to give the reasons on which their decision is based, and this document should be available to the parties. A *précis* of leading decisions should be published at regular intervals. Wherever a public enquiry is held in connection with the exercise of judicial functions by ministers, the Inspector's report should be published in all save the most exceptional circumstances.

These recommendations are good so far as they go; and constitute in most cases a definite advance on established practice. The disappointing feature of the Report is its failure to make any significant contribution to the structure of the system. Instead of endeavouring to increase the sense of responsibility and independence of the administrative tribunals, the Report relies on a hostile judiciary to provide "checks and balances." It recommends, accordingly, that the supervisory jurisdiction of the High Court to compel ministers and administrative tribunals to keep within their powers and to hear and determine according to law be maintained; and further, that anyone aggrieved by a decision should have an absolute right of appeal to the High Court on any question of law.

This is the means by which the rule of law is to be perpetuated and the liberty of the subject protected for all eternity. It sounds admirable. But when one looks a little deeper doubts begin to arise. In the first place, it is often extraordinarily difficult to discover any essential difference between a question of law and a question of fact. A question of fact in one generation sometimes becomes a question of law in the next; and a vast body of precedents is almost certain to arise on hair-splitting distinctions between questions of law and questions of fact in the field of public administration. When the courts want to interfere they will seek to find that a question of law is involved; and *vice versa*. Second, the procedure for getting a decision reviewed on a question of law by the courts is, to quote the Report, "too expensive and in certain respects archaic, cumbrous and too inelastic"; and the Committee recommends a cheaper and more simple procedure. One must



consider the implications of this criticism. Here are the judges and the lawyers complaining that they are not empowered in all cases to interfere with judicial decisions by administrative tribunals, and clamouring for more power. Yet in the large sphere where the right of judicial control over the executive *does* exist, the courts have done absolutely nothing to modernise, to cheapen or to bring into accord with modern needs a fantastic procedure which has been obsolete for at least a century. Yet this is a matter entirely within the control of the Rules' Committee of the Supreme Court! It is difficult to believe that the legal profession retains any considerable capacity for reforming either the law or the practice of the courts.

It is, indeed, the very backwardness of the court process which enables the departments of state to use the right of access to the courts as a weapon of the most tyrannous character. Compare, for instance, the cheap, informal and entirely admirable system of Income Tax Appeals before the Special Commissioners of Income Tax, an example of a true administrative tribunal, which the Committee admits "gives general satisfaction by its impartiality," with the oppressive costliness and lengthiness of the system of appeals from the Special Commissioners on questions of law to the High Court, the Court of Appeal, and the House of Lords. Only the wealthiest persons or corporations can afford to continue a dispute with the Inland Revenue once the threat of litigation has been made.

Fortunately, however, in the case of judicial decisions by administrative departments, there is no incentive for the government department to challenge its own decision in the courts, so that the vicious element to which I have just referred will be absent. Fortunately, again, the Committee has discovered a very remarkable method of leaving undisturbed the present allocation of functions.

The method consists of distinguishing judicial from quasi-judicial functions by a process of reasoning which appears to me entirely misleading. A "true judicial decision," they say, involves four requisites: (1) the presentation of their case by the parties to a dispute, (2) the ascertainment of the facts by evidence adduced by the parties, (3) the submission of argument on the law; (4) "a decision which disposes of the whole matter by a finding on the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law." A quasi-judicial decision, continues the Report, involves the

first two elements; it does not necessarily involve the third; and it never involves the fourth, which is replaced by "administrative action, the character of which is determined by the minister's free choice." In a later passage, in which an example is given of quasi-judicial functions from the field of public health, the Committee emphasises that, after examining the evidence and so forth, and taking into consideration medical policy in local administration, "In the end the minister makes up his mind what is *best* to do, and does it."

There is something almost naive in the distinction here drawn. The conception of "the law of the land" as being a complete and perfect structure ready to be applied to every controversy immediately it arises is one of those copy-book maxims which one thought had disappeared generations ago. Did the Committee take into account the view of the judicial process put forward by Mr. Justice Cardozo? Did they consider the discussion about "free judicial decision" which has been agitating the Continent for years? Can we be told just when and how the Chancery jurisdiction, for centuries a purely discretionary interference on moral grounds, became "truly judicial"? When did the *Conseil d'Etat* become judicial? Surely not when it began to follow precedents, for no court of law on the Continent is bound by previous decisions. Did not the House of Lords do precisely what it thought "best" to do in *Sorrell v Smith*, or the *Taff Vale* case, or *Quinn v Leatham*? Have not both the common law and equity been developed to an enormous extent by the judges doing what they thought "best" to do in the cases before them?

These and a hundred other questions spring to the mind in protest against the false view of history, of legal evolution and of the judicial process which the Committee's analysis involves. But they may be permitted to die away unanswered when we realise that this false analysis is the very instrument which enables the Committee to escape from the fetters of its terms of reference. By the simple device of declaring that "true" judicial functions must reside with the courts except in special circumstances, but that quasi-judicial functions may be given to administrative tribunals, the Committee in effect recommends that decisions which require consideration of high state policy in the field of social administration shall, as hitherto, remain within the scope of ministerial action. In this way a false analysis is turned to good purpose in distinguishing the things which are Caesar's from those which are not. Once again we are muddling through!

Will anyone ever say again that we<sup>9</sup> have no administrative law in this country?

<sup>9</sup> The great significance of administrative law is much more widely recognised in the United States than in England. Not only do the leading American law schools provide for extensive teaching and research in the subject but there is a steadily-growing body of literature on administrative law of original quality and high value. Two recent publications deserve special mention. One of these is Professor Sharfman's excellent treatise, *The Interstate Commerce Commission*, published by the Commonwealth Fund; the other is the exceedingly useful source book, *Cases and other Materials on Administrative Law*, Edited by Felix Frankfurter and J. Forrester Davison (C.C.H. University Casebook Series, Chicago, 1932). One finds in this volume the careful scholarship and wide range of interest usually found in works in which Professor Frankfurter has participated or of which he is the author.

# XIX

E. C. S. WADE

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## *Departmental Legislation: The Civil Service Point of View\**

THE Report of the Committee on Ministers' Powers<sup>1</sup> has now been available for more than a year, and the Committee's recommendations as to how far steps should be taken to secure the sovereignty of Parliament and the supremacy of law in the sphere of delegated legislation and judicial or quasi-judicial powers exercised by Ministers of the Crown are well known. The Report has been reviewed and criticized by (*inter alios*) Dr. W. A. Robson,<sup>2</sup> one of the principal witnesses before the Committee, and Mr. W. I. Jennings.<sup>3</sup> Both of these writers are teachers of law, and their observations should be carefully studied.

Less accessible are the two bulky and expensive volumes containing the Memoranda submitted by the Government Departments in the reply to the Committee's Questionnaire<sup>4</sup> and the Minutes of Evidence.<sup>5</sup> The Memoranda supply information to the advanced student of Administrative Law which it has hitherto been impossible to acquire in anything like such detail. Much of the evidence is so valuable that it deserves wider publicity than it is likely to receive if it is to remain buried in the 300 foolscap pages of small print which comprise the Blue Book in question. It is the purpose of this article to draw attention to some of the evidence of leading Civil Servants in relation to the legislative powers exercised by the Departments. Consideration of the even more difficult questions which arise in relation to judicial and quasi-judicial decisions by Ministers must be deferred for another occasion.

\**Cambridge Law Journal*, vol. v, 1933-1935, pp. 77-90. Reprinted by kind permission of the author and the publishers, Stevens & Sons Ltd.

<sup>1</sup> H.M. Stationery Office; Cmd. 4060, 1932, 2s. 6d.; cited below as M.P.P.

<sup>2</sup> *Political Quarterly*, 1932, vol. III, No. 3, pp. 346 ff.

<sup>3</sup> *Public Administration*, October, 1932, vol. X, No. 4, pp. 333 ff.

<sup>4</sup> Committee on Ministers' Powers, vol. I, 1932, H.M.S.O., 15s.

<sup>5</sup> Vol. II, 1 pound 10s.

Since the principal criticisms of departmental legislation are already well known, we shall confine ourselves to presenting the Civil Service point of view. This is one of the rare occasions on which Civil Servants have had an opportunity of recording their opinions without breaking the tradition of the Service, which forbids giving a direct answer to their critics.

Two of the principal witnesses whose evidence on Departmental legislation we shall consider were the Treasury Solicitor and the First Parliamentary Counsel. Of the Departmental evidence, it will suffice to take that of the Ministry of Health, since that Department is generally recognized as being most concerned with internal government, and particularly with the issue of technical regulations which account for so much of the volume of Departmental legislation. It was the work of this Department in bringing into force the National Insurance Act, 1911, by means of statutory orders which has furnished the precedent for much subsequent legislation.

The Treasury Solicitor emphasized the oft-forgotten truth that every Departmental power has been conferred by Parliament, and that for every official act of his Department the Minister must accept responsibility in Parliament. He then delivered the following emphatic answer to the criticisms which were brought to a head by Lord Hewart in his now well-known essay, which first appeared in a London daily paper in 1929, and was afterwards published in book form under the title of 'The New Despotism.' The Lord Chief Justice was invited to give evidence before the Ministers' Powers Committee, but replied that he had nothing further to add to what he had stated in this book, and thus the Committee were deprived of the advantage of having before them a witness to speak on behalf of the Bench.

Sir Maurice Gwyer's statement<sup>a</sup> was as follows: 'The popular portrait of the Civil Servant, avid of power and unscrupulous in his manner of obtaining it, is to those who know the facts so remote from real life as to be almost laughable. . . . A Civil Servant possessing intellectual power and strength of character will naturally exercise a greater influence than one who does not possess those qualities in the same degree. It may well be that he can and does exercise great influence upon a Minister; but the Minister has always the advantage of the last word. A bureaucracy in the true sense of the word does not, and cannot, exist in England, or indeed under any system of parlia-

<sup>a</sup> Minutes of Evidence, pp. 2 and 3, para. 5, and see para. 7 as to denial of alleged antagonism between the administrators and the law.

mentary government; for, if I recollect rightly, the word is borrowed from Continental systems of the past, where both Ministers and Civil Service owed a duty to the Monarch alone, and could not be held responsible by any popularly elected body.'

This defence of the Higher Civil Service—the witness was referring in particular to his administrative and legal colleagues—was accepted by the Committee who stressed in the report that the dangers of our administrative system are potential rather than real.

The Committee's Questionnaire requesting information relating to Departmental legislation fell under two heads: (1) Powers to make orders for the removal of difficulties, and to modify Acts of Parliament for that purpose; (2) Powers of delegated legislation with particular reference to those Rules, Orders and Regulations which are to have effect as if enacted in the Act conferring the power, and to those of which the making is to be conclusive evidence that they are properly made.

Powers to make orders for the removal of difficulties have been conferred from time to time by eight modern Acts of Parliament. The device is commonly known as the Henry VIII Clause, so called on account of powers supposed to have been conferred on that Monarch by the Statute of Proclamations, 1539, but it is more than doubtful whether that statute really conferred power to alter the law, and it is difficult to find instances of its operation before its repeal in 1547. The eight Acts in which the clause has figured in recent years have either initiated some far-reaching administrative reform,<sup>7</sup> or have created an entirely new piece of State machinery.<sup>8</sup> The object of the clause is to give the Minister power to adjust the new machinery within limited bounds and for a short period of time. The only power of this description at present in force is that conferred, not on a Minister of the Crown, but on County Councils by the Local Government Act, 1894.<sup>9</sup>

The recommendation of the Committee as to the use of the Henry VIII Clause is that it should only be used in exceptional circumstances, and then (a) for the sole purpose of bringing an Act into operation, and (b) subject to a time limit of one year from the passing of the Act. The Committee accepted the view that the sole

<sup>7</sup> *E.g.* Local Government Acts, 1888, s. 108; 1894, s. 80; 1929, s. 130; Rating and Valuation Act, 1925, s. 67.

<sup>8</sup> *E.g.* National Insurance Act, 1911, s. 78; Widows', Orphans' and Old Age Contributory Pensions Act, 1925, s. 36.

<sup>9</sup> Section 80

purpose of Parliament in including in modern enactments the Henry VIII Clause was to enable minor adjustments to be made. This is of interest in view of the severe criticisms directed at the inclusion of this power in the Rating and Valuation Act, 1925, and the Local Government Act, 1929. It is interesting to note that the Committee takes the view that the exigencies of party politics may make the clause a political instrument which must occasionally be used by the practical politician who realizes that the particular measure of reform dear to his heart may stand no chance of passing into law in a subsequent session." The National Insurance Act, 1911, is given as an illustration of the use of the clause as a political instrument.

The Henry VIII Clause confers powers of original legislation. We now turn to the evidence regarding delegated legislation proper. Emphasis is placed upon the confusion caused by the indiscriminate use of the terms 'order,' 'regulation' and 'rule.' On this point the Committee recommend specifically that "the expression 'regulation' should be used to describe the instrument by which the power to make substantive law is exercised, and the expression 'rule' to describe the instrument by which the power to make law about procedure is exercised. The expression 'order' should be used to describe the instrument of the exercise of (a) executive power, (b) the power to take judicial and quasi-judicial decisions.

The Treasury Solicitor points out that the great mass of Departmental rules, orders and regulations made under statutory powers are virtually statements of administrative rules which the Departments propose to adopt for the conduct of business entrusted to them by Parliament. They may be legislative in form, but the substance is administrative. For example," an Act may empower the Minister of Transport to approve the type of number plates on motor cars. Whether the approval be given in individual cases or by way of indicating the approved type, the act of approval is administrative. On the other hand the Act may empower the making of regulations with respect to number plates; this is a delegated power of legislation, but the result is the same. The witness contends that the assumption that, when Parliament confers a regulation-making power on a Department, it is necessarily parting with powers which should in the opinion of some be exercised by Parliament itself, is a somewhat rash one.

<sup>20</sup> M. P. R. p. 61.

<sup>21</sup> M. P. R. p. 64.

<sup>22</sup> Minutes of Evidence, p. 3, para. 12.

With this contention it is difficult to disagree; the mode of exercise of an administrative act is far more important than the form by which it is made operative, and it is difficult seriously to maintain that decisions of this kind should be made by the Legislature. In the example given by the witness the organizations concerned with the welfare of the motoring trade and of the public have easy access to the Minister, so have the police, whereas approach to Parliament by such bodies depends upon the presence in the House of private members who may be interested themselves or prepared to submit to the importunities of the outside organizations and to assist them in presenting their case.

The witness defends the practice of the detailed working out of statutes by regulations framed by experts in the Departments, pointing out that the legal profession does not regard itself as derogating from the authority of Parliament when the Rules Committee exercises its exclusive power of making new rules of procedure. On the contrary it assumes that such a Committee is a more competent authority. So it may be with departmental rules drawn by experts and confirmed by a Minister. This example is open to criticism. The Rules of the Supreme Court have been attacked both from within as well as without the legal profession on the ground that they are needlessly complicated just because they have been made by experts. Pressure, mainly from outside, has recently compelled this expert Committee to offer a simpler alternative to the litigant in the form of the so-called New Procedure Rules, 1932.

But further cogent arguments are advanced, particularly on behalf of the Ministry of Health, against transferring regulation-making powers to Parliament or Parliamentary Committees, except so far as scrutiny, as opposed to active participation in the framing of regulations, is concerned. So long as the regulation-making power is entrusted to Ministers, prior consultation with organizations representative of interests affected by the exercise of the power is facilitated. Apprehension is freely expressed lest the transfer of such power to Parliament would effectively prevent the Minister establishing contact and gaining the confidence of bodies which he is now in the habit of taking into consultation before framing regulations. The Ministry of Health states "in evidence that 'the matters with which regulations made by that Ministry deal (and the same is no doubt true of other Departments) are almost without exception under the continuous scrutiny of powerful associations and bodies representing local auth-

<sup>11</sup> Minutes of Evidence, p. 120.



orities, manufacturing and trading interests, officers of local authorities, and members of the public, whether as owners of property, rate-payers, professional men, insured persons and the like. This, the evidence continues, 'is a point of such fundamental importance in connexion with the consideration of any rule-making system that . . . it may be well to recall to the Committee some of the more prominent bodies with which to a greater or less extent the Department is in communication, formal or informal, in connexion with the exercise of rule-making powers.'

**Local Government.**—County Councils' Association; Association of Municipal Corporations; Urban and Rural District Councils' Associations; National Association of Local Government Officers; Association of Poor Law Officers.

**Public Health, Housing, Town Planning, Model By-laws.**—Royal Sanitary Institute; Surveyors' Institution; Royal Institute of British Architects; Housing and Town Planning Association; Town Planning Institute.

**National Health Insurance.**—Approved Societies' Consultative Council; National Association of Approved Societies; National Association of Insurance Committees; British Medical Association.

There may be added in connexion with regulations relating to food-stuffs the innumerable trade associations. Beneficiaries under the Widows', Orphans' and Old Age Contributory Pensions Acts form the one considerable exception to this rule.

It is obvious that the real and effective scrutiny of departmental regulations lies with representative bodies of this type. A striking instance is afforded by the regulations made in 1925 (operating only in 1927-28) with regard to the use of preservatives in food. Notice of the draft was sent to over sixty associations and individuals. Copies of the draft were also sent to a number of foreign, Dominion and Colonial Governments. Thirty deputations were received by the Department.

It is to be noted that statutory provision for the prior consultation by a Minister of private organizations is nowadays often prescribed as a condition precedent to rule-making. Of late Parliament has even entrusted to a non-political, non-departmental committee (at present consisting of three members only) the sole power of recommending to the Treasury the exemption from, and in the case of some articles the increase of, taxation under the *Import Duties Act, 1932*. This is

one of the most important delegating enactments Parliament has ever passed.

The Ministry of Health is critical of any system by which the final determination of the form and matter of regulations should be reserved to a Parliamentary Committee which would have to afford direct access to such organizations as have been mentioned above.<sup>11</sup> A system under which every regulation would have to be fought through a Parliamentary Committee would involve not merely a complete reorganization of the Department's staff—in itself not an insuperable objection except on the financial aspect—but would be incompatible with the present procedure of Parliament in relation to public as opposed to private and local legislation. But the most serious objection envisaged by this Department is the changed character in the negotiations with the representative associations. Frank interchange of views, as at present, would give place to a tendency for the parties concerned to play for position and stake out extravagant claims as an opening move in the struggle before the Parliamentary Committee.

This evidence<sup>12</sup> seems to have impressed the Committee. The recommendation for the establishment of a small Standing Committee of each House, so far as regulations are concerned, does not suggest that it would be the function of such Committees to report on the merit of regulations or rules much less to perform the actual task of rule-making.

Returning to the evidence of the Treasury Solicitor, it is interesting to note how in practice Bills which confer regulation-making and similar powers come to be introduced into Parliament and how such powers are in practice exercised. Proposals for legislation fall into three classes—

- (1) Bills upon which the Government stake their political existence.
- (2) Principal Departmental Bills reflecting Government policy, but not involving major issues.
- (3) Non-controversial Bills reflecting Departmental policy on particular points.

The broad outlines of Bills of the first class are settled by Ministers themselves, the other two classes of legislation are mainly the work of the Departments. Final instructions for all Bills go to the Parliamentary Counsel, but no Government Bill is laid before Parliament

<sup>11</sup> Minutes of Evidence, p. 122, para. 8.

<sup>12</sup> M. P. R. pp. 68 ff.

without the Minister in charge having personally studied and made himself acquainted with every clause, nor is it possible for any official to insert clauses or provisions which the Minister has not formally approved. The Minister has always the deciding voice. Rules, regulations and orders authorized by an Act are drafted usually in the Department concerned by Departmental lawyers, but no regulation is finally made without the approval of the administrative heads, and none involving questions of policy or likely to give rise to comment in Parliament or in public would fail to be brought to the attention of the Minister himself. No competent Civil Servant would willingly incur the risk of exposing the Minister to Parliamentary criticism by an endeavour to stray beyond the law.

This description is essentially different from the assertions which are made from time to time of Ministers acting as the spokesmen of Civil Servants and sponsors of legislation evolved by bureaucratic guile without proper appreciation of its purport, even on the part of the Minister in charge. It also emphasizes the great value of Parliamentary criticism as a constitutional safeguard.

One of the more obvious grounds for attacking delegated legislation lies in that form of enactment which excludes regulations, rules and orders from the purview of the Courts by providing that they shall be deemed to have been enacted in the Act under the authority of which they were made. The House of Lords in *Institute of Patent Agents v. Lockwood* (1894) A.C. 347 held that in the case of a rule of this description, which was capable of annulment by resolution of either House of Parliament within forty days of its being laid before Parliament, the Courts were precluded from inquiring into the validity of such rule, if it was not so annulled. It is well known that rules so laid are seldom actively considered, though this defect will be remedied if the Committee's recommendations are accepted.<sup>16</sup> Apart from this, the scope of the decision in *Lockwood's Case* has been narrowed by the recent case of *Minister of Health v. The King* (1931) A.C. 494. The House was here dealing with the application of the *ultra vires* doctrine to a Ministerial order confirming a clearance scheme under the Housing Act, 1925; such an order was not required to be laid before Parliament, but was expressed to have effect as if enacted in the Act. The Court of Appeal<sup>17</sup> held that such an order was *ultra vires* if it departed from the statutory conditions for its

<sup>16</sup> M. P. R. pp. 68—70.

<sup>17</sup> *The King v. Minister of Health, Ex p. Yaffe* (1930) 2 K. B. 98.

promulgation. The House upheld this view, while holding that this particular order was *intra vires*.<sup>18</sup> It is thus now permissible to attack the validity of an order of this description in the Courts, at all events if it is not one which is required to be laid before Parliament for confirmation or annulment; in the latter case the Committee's recommendation for a scrutiny by a Parliamentary Committee should provide a fairly ample alternative safeguard.<sup>19</sup>

The appearance of this type of enactment in a modern statute, the Treasury Solicitor stated, was not to encourage Departments to an excess of zeal, but to remove an element of uncertainty which might otherwise exist if the possibility of challenge existed. The witness expressed his personal opinion that the safeguard was often unnecessary, but regarded it as essential in those cases where the Departments have been entrusted by Parliament with wide powers, the exercise of which may have a continuing effect upon proprietary rights or the status of individuals. For example, the alteration of parish boundaries, which by section 57 of the Local Government Act, 1888, cannot be impeached after six months, must be determined once and for all and must not be subject to attack some years later by a disgruntled ratepayer.

The solution would appear to lie in leaving open an appeal to the Courts strictly limited as to time. Section 11, subsection 3 of the Housing Act, 1930, is an illustration of this; 'if any person aggrieved by an order [clearance scheme] desires to question its validity on the ground that it is not within the powers of this Act or that any requirement of this Act has not been complied with, he may, within six weeks after the publication of the notice of confirmation, make an application for the purpose to the High Court, . . .' It is only on the two grounds mentioned in the sub-section, or either of them, that the validity of an order can be questioned: *Re Bowman, South Shields (Thames Street) Clearance Order, 1931* [1932] 2 K. B. 621. An order cannot be attacked at this late stage on the merits of the scheme which it confirms. The alternative is to return to the practice of requiring *ad hoc* legislation in every case, as was the rule in the case of clearance schemes until the law was deliberately altered by Parliament in 1909.

<sup>18</sup> Such an order is now subject to an appeal to the Courts under a time limit: Housing Act, 1930, s. 11, sub-s. 3.

<sup>19</sup> As to whether orders requiring to be laid before Parliament can be questioned in the Courts, see (1931) A. C. at pp. 503 and 535; and see below.

There is a further category of rules which has been criticized, namely, where the Act declares that the fact of making the rule shall be conclusive proof that it has been properly made and satisfies the requirements of the Act. Usually this provision, which aims at achieving certainty, is superfluous because the rule has been validated by some other provision in the Act itself; *e.g.* by a declaration that it shall have effect as if enacted in the Act. To this there are only one or two exceptions, which are justified by the presumption, the witness suggests, that a great Department of State, or in one case the Rules Committee of the Supreme Court, will perform its duties in the manner prescribed by Parliament. The witness might have added that among merchants a standard of honesty is often assumed regardless of legal precautions, but it is difficult to persuade the average citizen that a Department has much regard for himself. We are inclined to think that this device is chiefly justifiable as a protection against needless litigation at the public expense.

The Treasury Solicitor next deals with possible modifications or alterations in the existing system. The two problems for solution are (1) publicity in relation to administrative action, and (2) the protection of the public against undue exercise of Departmental power. The present practice of consultation with organized interests by the Departments before action is taken does, he claims, secure that due notice is given of any intention of a Department to make new regulations. A widening of the scope of the Rules Publication Act, 1893, is advocated,<sup>20</sup> as well as a limitation of the period for which provisional rules made on the ground of urgency should remain effective. Except in the case of Departmental orders which are in the nature of Private Bill legislation, he sees objections on general principles to approval of draft regulations and orders by Parliament. He regards it as a grave derogation from the principle of ministerial responsibility that Parliament should be asked to approve in advance a great mass of regulations almost wholly of an administrative character. The two main safeguards to protect the public against an undue exercise of Departmental powers should be (1) Parliamentary criticism and (2) the action of the Courts. An address praying for annulment provides a real safeguard in Parliament<sup>21</sup> and the Committee accepts this view, but recommends that exceptional regulations should require an affirm-

<sup>20</sup> [This was achieved by the Statutory Instruments Act, 1946, which replaced the earlier Rules Publication Act. Ed.]

<sup>21</sup> See M.P.R. p. 69.

ative resolution. The suggestion of challenge in the Courts for a strictly limited time has already been discussed.

This part of the evidence concludes with the observation that the scope of Departmental powers at the present time is not the only subject-matter for investigation, which 'goes far deeper and involves the whole philosophy and technique of modern government. The greater the complexity of our civilization and the wider the range of our legislation, the more difficult it is for a popularly elected Legislature to exercise complete control over administrative policy. The utmost under present conditions that it can do in fact is to secure that competent administrators are chosen and to enforce strictly the principle of ministerial responsibility; any fundamental change would imply the adoption of a new theory of government.'

Upon this it may be observed that it is manifestly beyond the capacity of the most competent member of Parliament to comprehend the field of public administration in all its manifold aspects. Parliament, and particularly the House of Commons, is ill suited for the determination of detailed administrative policy. It has shown itself unable to control the day-to-day expenditure of successive Governments. At most Parliament can show its confidence in those whom it chooses to entrust with the direction of general policy. A possible way to alter this would be to shift the responsibility for Departmental action to select committees of Parliament—an inroad on the doctrine of ministerial responsibility. The statutory committees of county councils and other local authorities offer an analogy. It is a commonplace that the effective work of those bodies is accomplished in committee rather than by the council as a whole. But such a change would involve a drastic alteration in the status and composition of the Ministry and tend to sever Ministers from the work of their Departments. It would also add to the already considerable burden of membership of Parliament, which would be compensated by a reduction in the frequency of sittings of the whole House. If administrative matters which are now the responsibility of Ministers became the responsibility of Parliamentary Committees, criticism would no longer involve in the long run, as now, a vote of confidence in the Government; moreover greater publicity would be ensured. It was failure of the attempt to combine government by Committees of the Privy Council with Parliamentary control which led to the development of ministerial responsibility, but a reversion to government by Parliamentary Committees in administrative matters is not to be rejected for his-

torical reasons; such committees would form a link between the Legislature and the Executive such as was not even contemplated in the time of Charles II. So radical a change in constitutional practice is not to be undertaken without full consideration of its effect upon ministerial responsibility; so far as the Civil Service is concerned, one may hazard a surmise that the dependence of the committees controlling Departmental administration would be even greater than the reliance which an individual Minister necessarily places upon the permanent heads of his Department. Policy, as well as administration, would become their concern to a greater extent than at present. The chief advantage to be derived from the change would be the association of the private member with the actual work of government. Whether this is compatible with party government is debatable, although the parallel from local government points to an affirmative answer.

The evidence given by the First Parliamentary Counsel is more technical and only in one or two respects adds to the description of their powers submitted by the Departments in their Memoranda. The witness points out that much of the field is covered by Dr. C. T. Carr in his little book on *Delegated Legislation*,<sup>22</sup> reproducing a short series of lectures delivered some years ago in the Cambridge Law School. Dr. Carr is Editor of Statutory Rules and Orders. Attention is drawn to the existence of delegated legislation as early as the fourteenth century. The modern practice of entrusting delegated powers of legislation originated with the Poor Law Act, 1834, and it is to be observed that the Commissioners to whom the powers were given were not, at first, directly responsible to Parliament. It appears from this part of the evidence that in practice the time for drafting Bills is inadequate and the witness agrees with the criticism so often expressed by lawyers that the final form of Bills after passing both Houses of Parliament is unsatisfactory. By contrast statutory rules can be prepared in comparative leisure and their subject-matter arranged in logical and intelligible shape, uncontrolled by the exigencies of Parliamentary procedure. From a Departmental standpoint this is a strong argument in support of the admitted inevitability of delegation; on other grounds, however, it is not convincing. There seems no reason why Public Bills should not be prepared at leisure in most cases, if Ministers were to expedite their decisions to give instructions for drafting, and the arrangement of the subject-matter in logical order should be

<sup>22</sup> Cambridge University Press, 1921.

feasible. Intelligible shape admittedly presents greater difficulties on account of amendments being inserted by Parliament. The remainder of the evidence of this witness consists of a discussion of existing safeguards with suggestions for improvements, particularly in the interests of publicity by amendment of the Rules Publication Act, 1893.

We have already discussed the striking evidence given on behalf of the Ministry of Health regarding prior consultation of interests by that Department as a preliminary to the exercise of its regulation-making powers. In addition the Ministry does not object to the extension of the rule-making procedure laid down by section 1 of the Rules Publication Act, 1893, to cover all this Department's rule-making powers. For a reason which is not clear the old Local Government Board was exempted from the obligation to publish rules under that section. Much emphasis is laid upon the difficulty of distinguishing between administrative and legislative regulations.<sup>23</sup> Evidence is given to show that provision for annulment of regulations by addresses of Parliament to the Crown can in practice be effective, and examples are given of such addresses in connexion with regulations made under five modern Acts; in all such cases but one the annulment was secured. Broadly speaking, this Department's regulations must be laid before Parliament (apart from urgency regulations relating *e.g.* to infectious diseases) and are liable to annulment by this method. Nor does the Ministry see any serious objection to its regulations (as opposed to orders) being left open to challenge in the Courts, though in some cases the indefinite risk of a regulation being held invalid might defeat its object. On the other hand all the evidence under review regards it as essential that orders, such as those relating to the compulsory purchase of land for confirming improvement and reconstruction schemes, should be as final as an Act of Parliament,<sup>24</sup> at all events after a short interval during which objection may be taken in the Courts to the legality, but not the merits, of an order.

An interesting constitutional point is raised by the possibility of allowing the Courts to hold *ultra vires* a regulation which has received the active or passive approval of Parliament. Such a possibility would seem to involve the reversal of the decision in *Lockwood's Case* (above). But such resolutions as actively affirm regulations are not Acts of Parliament, and it is difficult to see why the *ultra vires* rule

<sup>23</sup> See *ante*.

<sup>24</sup> Orders for compulsory purchase for other purposes are generally subject to parliamentary approval—at all events if objected to—*i.e.* by Provisional Order Confirmation Acts.



should not be applied where the affirmed regulation is one which goes outside the Minister's powers of enactment. The supremacy of statute law enacted by Parliament need not involve the infallibility of a regulation merely approved by an affirmative resolution of both Houses, much less of a regulation which has received the negative approval of Parliament by lying on the table for the requisite period of, say, forty days without objection being raised.<sup>25</sup>

We have endeavoured to present a summary of the foregoing evidence so that it may serve to bring into proper perspective a problem which is vital to the private citizen living, as he or she does, in a State which in many new directions is imposing its controlling hand year by year. That this part of the evidence impressed the Committee is apparent from the recommendations with regard to delegated legislation.<sup>26</sup> It may be remarked that the composition of the Committee was such that they could not be accused of any bias towards the Civil Service point of view.

<sup>25</sup> In *Minister of Health v. The King* (above) Lord Dunedin, at pp. 502-3, discussing the distinction between that case and *Lockwood's Case*, says: 'I do not think that that distinction, obvious as it is, would avail to prevent the sanction (of Parliament) given being an untouchable sanction'; and see *per* Lord Thankerton, at p. 535.

<sup>26</sup> M.P.R. pp. 64-70.

## *Part Eight*

### LOCAL GOVERNMENT

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"Caesar, when he went first into Gaul, made no scruple to profess 'That he had rather be first in a village than second at Rome'."

SIR FRANCIS BACON in *The Advancement of Learning*.

## XX

J. L. HAMMOND

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### *The Social Background: 1835-1935\**

IF we compare the state of the English towns in 1835 with their state in 1935, we might well conclude that the creation of our modern system of local government is the greatest British achievement in the last hundred years. At the time of the passing of the Municipal Corporations Act the English towns were sunk in a condition of barbarism that would have put a citizen of the Roman Empire to the blush. *They had none of the amenities, few of the decencies of civilization.* Lyon Playfair told the Health of Towns Commission in 1842 that in all Lancashire there was only one town, Preston, with a public park, and only one, Liverpool, with public baths. In 1850 William Ewart, the leader of the crusade for public libraries, told the House of Commons that large and populous towns like Leeds and Sheffield were without public libraries of any kind. These were considered luxuries. But water and drains and clean streets were lacking also. The Health of Towns Commission reported in 1844 that of the fifty large towns of England there was scarcely one in which the drainage was good and only six in which the water supply was good. A leading historian has said of the century that followed, "This nation has shown the way to all others in means for the removal of filth and the supply of pure water."<sup>1</sup> Nothing surely that the British people have done in the world in these hundred years is more important than the revolution it has effected in its local government.

One thing must strike the reader who reflects on this century of reform. Southey, one of the few men of his age to grasp the importance of civilizing the conditions of town life, remarked on the neglect of

\*H. J. Laski, W. I. Jennings, and W. A. Robson (eds.), *A Century of Municipal Progress* (George Allen & Unwin, 1935). Reprinted by kind permission of the author and the publishers.

<sup>1</sup>*The People on its Trial*, by Stanley Leathes, p. 122.

the times: "The Augean stable might have been kept clean by ordinary labour, if from the first the filth had been removed every day; when it had been accumulated for years, it became a task for Hercules to cleanse it." The task set the British people was Herculean, but there has been no Hercules in the story of reform. We can connect most reforms with statesmen whose names are household words, but the reform of local government is not in this class. There was no President of the Local Government Board until 1872, and it is only lately that the office has been considered one of capital importance. Few front bench men took part in the debates on these questions in the nineteenth century. At the time when the barbarism of our towns was a danger to civilization, comparable, as Macaulay put it, to the danger to which the Roman Empire was exposed when its vitality was over-matched by its barbarian neighbours, *an ambitious man would seek to be Chancellor of the Exchequer or Secretary of State for Foreign Affairs; the questions that concerned local life were the care of minor Ministers. The Minister who introduced and passed Bills on which depended the health of London, Manchester, and Leeds in the forties was known as the Chief Commissioner for Woods and Forests.*

This is not an accident. It is a fact of significance. When the municipalities of the Roman Empire were in Toynbee's brilliant description "a thousand city states living side by side in peace and concord," town life was engaging the interest and exciting the imagination of the best minds of the age. In England, when the nineteenth century opened, the country districts and those districts that were country one day and town the next were under the rule of the squires, men often of character and courage but not as a rule men of large views or wide imagination; the towns were under the rule of little oligarchies, seldom public spirited and often corrupt. The focus of politics was Parliament, a rival with which local statesmanship had not been embarrassed in the Roman Empire. And Parliament itself had no tradition to help the creative spirit. The ruling mind of the eighteenth century looked on local life as the province of the country gentleman, aided by overseers and parish constables. Parliament itself was regarded rather as a checking and limiting body than a legislative body. It existed to examine and abate grievances. It was a bridle on the executive power.

In this atmosphere it was not easy to set out on the creation of a system of local government in England as a deliberative and coherent effort of statesmanship. The constructive temper was too feeble; the tradition of the eighteenth century too strong. The reform of local

government did not break with that tradition; rather it followed it. For as Parliament was looked upon as a tribunal, a check on the executive power, the habit grew up in the eighteenth century of appointing bodies and committees to inquire into this or that alleged grievance or abuse. After the Reform Bill, when England had a Parliament more in touch with the needs and temper of the new society created by the beginning of the industrial revolution, this method was used with great effect by public men who wanted to call attention to a particular problem and to bring to bear upon it the skilled experience of men who had studied it. The great series of parliamentary inquiries which play so large a part in the history of the nineteenth century, served two purposes of importance. They roused the concern of Parliament and the Press, and they called into the public service doctors, lawyers, and thinkers who acted first as teachers, then as agents; men like Joseph Parkes, Edwin Chadwick, Southwood Smith, Lyon Playfair, W. H. Duncan, the great Liverpool doctor who made his town a pioneer in public health, and John Simon, who was first Medical Officer to the City of London and then, as Medical Officer to the Privy Council, the nation's leading adviser on public health. The history of local government is traced through a series of great names, through the patient work of men behind the scenes rather than the splendid triumph of actors on the stage. It has no pitched battles leaving behind them heroic echoes. It has no Midlothian campaigns.

This is one reason why it made such slow progress, why, when you read the Report of the great Sanitary Commission of 1869, you find the same complaints that you find in the Report of the Committee of 1840, and why when you come to the Report of the Commission of 1884 you find again the evils of which you had read in the Report of 1869. In 1871 Gladstone made a remarkable statement in the course of a famous speech at Blackheath. He said that Governments had every motive for legislating on such questions because they were not party questions, "because while we are dealing with them the existence of the Government is hardly in question, because instead of a constant and daily strife, you have, upon the whole, concord and harmony between the two sides of the House." But politics owed all their excitement at this time to the spirit of warfare, and unless a subject lent itself to dramatic conflict it was apt to be neglected. *The Times* called attention to this difficulty in the way of sanitary reform as early as 1847: "The crusade falls to the ground for want of a Saladin." The driving force in politics was party spirit or sectarian spirit,

and measures that did not excite either were at a great disadvantage. The description given by *The Times* in 1872, when Stansfeld introduced the Government's Bill for creating local sanitary authorities, would apply to many such debates. "The House of Commons presented an appearance which might have been expected if the subject under discussion had been a Turnpike Bill, instead of a measure involving the health and happiness, the moral and material prosperity of the nation. A mere handful of members were thinly scattered over the Ministerial Benches, while the opposite side of the House looked still more deserted and forlorn. Dr. Lyon Playfair, in the opening sentence of his speech in favour of the Bill, took occasion to twit the Conservative Party with their apparent indifference to the new Tory watchword, '*Sanitas sanitatum, omnia sanitas*,' proclaimed by Mr. Disraeli to his admirers and adherents at Manchester. It must be allowed, however, that Liberal members showed little more interest than their opponents." For the first half century after the passing of the Reform Bill the men who were pushing for the reform of local government, men like Chadwick, Ashley, Normanby, Hume, Toynbee, Dickens, and Delane, were pushing against a dead weight of apathy just because local government was not a party question or a question over which church fought chapel or landlord fought manufacturer. In 1847 and 1848 there were long debates in Parliament on the Public Health Bills introduced by Lord John Russell's Government. The *Annual Register* devoted to the proceedings of Parliament 259 pages in 1847 and 194 pages in 1848, but did not give a single line to these debates.

To understand this we must keep in mind an important aspect of nineteenth-century politics. They provided the English people with the dramatic excitement which to-day is supplied by the theatre, the cinema, and other kinds of public entertainment. The prestige enjoyed to-day by great film actors or great athletic heroes was then enjoyed by statesmen. In the first half of the century, in a society without theatres, music, galleries, or playgrounds, there was hardly any rival to politics as an absorbing diversion. When later in the century this great empty space was slowly filled up by public amenities the tradition lasted because England happened to have in Disraeli and Gladstone two public men whose contests held her spellbound.

If you turn from party politics to the life of the towns it is easy to understand why there was less ardour for action and reform than

taste of power. The Municipal Corporations Act of 1835 was a revolutionary measure in the sense that it swept aside the mayors and aldermen and little oligarchies of co-opted and self-elected aldermen and burgesses who were in office in the old corporations, and substituted elective town councils. But if you considered who elected those town councils, what power they exercised, and how little they could do, it was a conservative measure. In 1835 Liverpool, with a population of 200,000, had 6,000 voters. Until 1850, when the municipal franchise was extended by an accident, the electorate was a middle-class electorate. The powers exercised by these town councils were very much restricted. Before 1835 when a town wanted some public service or improvement, it appealed to Parliament for a special Act, and Commissioners were set up to undertake the supply of gas or the paving of streets or the making of sewers or whatever the special task might be. When the Act of 1835 was passed the town councils were not allowed to absorb these Commissions. The Corporations Act merely provided that the Commissions could transfer their powers if they pleased to the town councils. The effect of this decision was seen in the figures given by Lord Morpeth in the House of Commons when he introduced his Public Health Bill on May 5, 1848. There were only 29 towns where the powers of draining, cleansing and paving were vested exclusively in the town council. There were 66 towns where those powers were exercised jointly by town councils and Commissioners. There were 30 towns where the town councils had no powers of draining, cleansing, and paving, and where these powers were exercised independently by Commissioners. Lastly there were 62 towns where there was no authority exercising such powers. Thus thirteen years after the passing of the Municipal Corporations Act, out of England's 187 incorporated towns, 62 were left without means of draining or cleansing, and only 29 had power to act through their elected government. Of towns with over 5,000 inhabitants, there were in all 276 that were left, so far as sanitation, streets, and water were concerned, to complete anarchy.

The narrow limits within which the Corporations were confined by the Act of 1835 were due to distrust of the new authorities. Morpeth said that the Government had been afraid that the new town councils would be political. Apart from this there was great anxiety on the part of all the vested interests, water companies, gas companies, railway companies, even burial companies, in addition to the general alarm of property. There was thus from the first a great obstacle to

all efforts to give the town councils power. On the other side, local authorities were very jealous of their independence, and many of them resisted obstinately all proposals for setting up a central department. The relationship that exists to-day between local authorities and central government follows the plans outlined by Tom Taylor, the famous editor of *Punch*, who was on the staff of the Home Office and afterwards the secretary of the first Local Government Board, in a paper that he read to the Social Science Congress of 1857. The local and central authorities are connected in two ways. The central authority has certain limited powers of inspection and control, and the local authorities subject to this pressure are stimulated by direct help from the central government in the form of grants in aid. The struggles over local government between the 'thirties and the 'seventies are the struggles of men feeling their way to this kind of solution, hampered all the time by the resistance of powerful interests and discouraged by the lack of popular enthusiasm.

In these struggles the year 1848, a year so memorable for other reasons on the continent of Europe, has a special significance. For in that year after a series of failures a Public Health Bill made its way to the Statute Book. It was the result of much patient effort. Parliament and the public, chiefly through the influence of Edwin Chadwick, had been educated by three reports, the result of three important inquiries in the 'forties. In 1840 Slaney, an energetic and public-spirited Member, obtained the appointment of a Select Committee on the Health of Towns. In 1842 the Poor Law Commission published a famous report on the Sanitary Conditions of the Labouring Population of Great Britain. In 1843 Peel set up the Health of Towns Commission, which issued two reports in 1844 and 1845. Several attempts had been made at legislation. In 1841 Normanby, Home Secretary in Melbourne's Government, had passed two Bills through the Lords, giving town councils large powers over streets and sewers. His Bills as first introduced prohibited back-to-back houses, a reform that was not affected till 1909. After Melbourne's Government had fallen, these Bills were shelved, and Peel, instead of legislating, set up his Health of Towns Commission. In 1845, when the Commission had reported, Lord Lincoln introduced a Bill based on its conclusions, explaining that the Government wanted to have it discussed in the recess. The Bill perished in the crisis over the Corn Laws next year. In 1847 when Russell had become Prime Minister, Morpeth introduced his first Bill, and there were long debates in Parliament and



fierce debates in the Press. His second Bill in 1848, much weakened in respect of its treatment of gas and water, became law.

The preamble of the Act was as follows:

"Whereas further and more effectual provision ought to be made for improving the sanitary conditions of towns and populous places in England and Wales, and it is expedient that the supply of water to such towns and places, and the sewerage, drainage, cleansing, and paving thereof, should as far as practicable be placed under one and the same local management and control, subject to such general supervision as is hereinafter provided; be it therefore enacted that this Act may be applied in manner hereinafter provided to any part of England and Wales."

The machinery of the Bill shows how powerful was the opposition that had to be encountered and met. To all reformers it had long been clear that a central department was needed. It was needed for two reasons. In the first place its help was needed, in the second its pressure. "A town of manufacturers and speculators," said *The Times*, which fought a great battle in Delane's hands for public health, "is apt to leave the poor to shift for themselves, to stew in cellars and garrets, nor are landlords and farmers apt to care much for cottages. Something of a central authority is needed to wrestle with the selfishness of wealth." For some years the most ardent reformers, the men who formed the Health of Towns Association, men like Joseph Foyntee, Thomas Tooke, Ashley, Normanby, and, most important of all, Edwin Chadwick, had been struggling to mobilize whatever enthusiasm or concern their agitation and teaching on this subject had excited as a force to coerce or supplement local sentiment. The setting up of this Board marked the victory of their ideas. Chadwick, though an unpopular administrator, had done more than anybody else to make practicable the great ambition he had conceived. The Improvement Commissioners set up in the eighteenth century and the early nineteenth century had tried to make town life tolerable and decent for the rich. Their success was seen in the improvement of the better streets and the cleansing of the better districts. Chadwick sought to make town life tolerable and decent for the whole community.

The Board which was now set up was unfortunately planned on a bad model. In 1834 the Whig Government had carried out a drastic reform of the Poor Law. The motive that dominated its policy was the desire to extinguish the method of giving relief that is generally known as the Speenhamland method; allowances in aid of wages based

on the number of children whom the man or woman had to feed. This method had spread all over the south of England, and Ministers were afraid that its extinction would provoke violent resistance. They therefore set up in the Poor Law Commission a body with extraordinary powers, holding, as Nassau Senior put it, that the reform must be enforced by "those who had no stacks to burn." At the same time they had reorganized local administration by combining parishes into unions, with Boards of Guardians elected for the whole district. Thus they had set up new authorities central and local, and being dominated by the belief that what the time needed was a surgical operation they had made the central authority a disciplinary body rather than a guiding and helping body and they had made it independent of Parliament.

It was in the same spirit unfortunately that the first experiment was made in creating sanitary authorities. The old Poor Law authorities had been negligent, incompetent, and often corrupt; they had been put on one side by a board of energetic men armed with exceptional means of interference. Sanitary law was in some senses in the same case. Why not, then, adopt the same plan? Some had proposed to set up a Ministry of Health, others to make the Home Office a central department for this purpose. These plans were dropped in favour of a scheme on the Poor Law plan. A central board was set up, a body of Commissioners of equal authority with a Minister sitting at the table as an ordinary member. The Board was empowered to create a local health district and a local board, either on petition from the 10 per cent of the ratepayers or in cases where the death rate exceeded 23 per 1,000. In a municipal borough the town council was to be the board; in other places a special board was to be set up. These boards were to be responsible for water, drainage, management of the streets, burial grounds, and the regulation of offensive trades. They could levy a general rate and special district rates based on the poor law assessment. The weaknesses in the plan are evident, for it irritated local authorities without supplying the General Board with enough power to overcome their active or passive resistance to reform. The General Board could force a Local Board on a district, but it had no real control over a Board that appointed and dismissed the most important of its officials. Thus this great experiment started in a hostile atmosphere, and Chadwick, though he was one of the greatest public servants of the century, was too unaccommodating and uncompromising for official work which brought him into touch with local

or popular sentiment. This had been shown very clearly by his career as the autocrat of the Poor Law Commission, and unfortunately for his plan he was made one of the members of the Board of Health. That plan would have had much better chance if it had been in other hands. As a result, after the Board had been in existence six years, the Government were defeated when they asked Parliament in 1854 to reconstruct the Board and continue it for another two years. The House of Commons rejected the proposal and put an end to the life of the Board. Disraeli and John Bright joined in destroying it.

The Act itself, if it came to grief in this sense, was still a notable advance. For the first time England had authorities for public health, central and local, armed with a staff and considerable powers. The Act was not universal, but it became effective in 168 places where the ratepayers had asked for it, and in 14 where the death rate was abnormal. These places included growing towns where sanitary measures were specially needed, such as Bolton, Bradford, Merthyr Tydfil, Sunderland, and Wigan. Thus the country had had a lesson in the value and importance of such reforms. Moreover, the Act had another important feature. It has been pointed out that the regular procedure adopted in the eighteenth century when a reform was wanted—a turnpike road or an enclosure—was for a number of persons to petition Parliament for an Act setting up a body to carry out the projected scheme. This method was used for the improvement of towns both before and after the Act of 1835. Parliament had been too mistrustful of local authorities to give them wide powers, and hence if a town wanted an improvement it had to ask for a special Act. In 1845 Hume, an ardent local government reformer and a pupil of Bentham, had hit on a plan for simplifying this expensive procedure. He persuaded Parliament to pass a series of model clauses Bills, enabling a local authority to incorporate clauses relating to gas works, water works, draining, and other public needs in their own local Acts. In 1847 such a Bill was passed relating to public parks. This clause was embodied in the Public Health Act of 1848, and thus for the first time a local authority was allowed to spend public money on providing a public park without getting leave from Parliament. Two years later William Ewart brought his long struggle for public libraries to victory, and from 1850 it was possible for towns to provide themselves with libraries without asking for a special Act. In 1845 he had carried an Act authorizing towns to establish public museums though the opposition was so strong that Parliament would only sanction a

## Local Government

a halfpenny, and the operation of the Act was confined to with more than ten thousand inhabitants. In 1850 he proposed that restriction should be abolished, and that all towns should be required to provide libraries as well as museums. The opposition was not enough to prevent the Young England Party led by Disraeli, Bright, and Hume from supporting him. But the opposition was strong enough to compel compromise, and the Act as it passed required the consent of two-thirds of the ratepayers.

The 'forties had thus made a very important contribution to the history of local government. Three ideas had come into politics: first, that there should be a central authority; the idea that sanitation, public health, and similar matters should be under the control of a central authority; the idea that towns should provide public libraries and public museums. These principles had made their way through great difficulties. We can see how serious were the obstacles, therefore how much the English people owe to men like Chadwick, Ashley, Hume, Slaney, and the other politicians and public men who gave themselves up to these questions, as well as to Delane and Charles Dickens, who helped them in the Press, when we find Gladstone saying in the House of Commons that the Public Health Bill of 1848 would never have been carried but for the remarkable popularity of Morpeth. The old view that so long as private enterprise was left unchecked nothing much could go wrong with social life, and that as long as the rights of property were ever threatened, everything would go wrong with it, was so strong in the classes that made the laws and ruled the towns, that nothing but a great tide of enthusiasm could ever overcome it. Hudson, the great railway king, was a good example of the type of man who was prepared to leave Newcastle, as Palmerston described it, in a state that made any civilized man shudder, rather than put any burden on capital. Enthusiasm never acquired the strength that was needed for a victorious political campaign. But success was taken by fear. To understand that fear we must look at the state of England. The 'forties have often been called the "hungry 'forties." It would not be less true to call them the "dirty 'forties" and "bleak 'forties." The "dirty 'forties" produced the cholera, and the "bleak 'forties" produced the Chartists. The passing of the Ten Hours Act in 1847, the passing of the Public Health Act in 1848, the passing of the Libraries and Museums Act in 1850 were all helped if not caused by the fear that was inspired by these port-

ents. It is arguable that these three measures made a more important mark on the life of England than the Repeal of the Corn Laws in 1846.

When Morpeth introduced his first Public Health Bill of 1847 he included London in its scope, but he was compelled by the strength of the resistance to drop this proposal. Instead he set up a Royal Commission. The Commission recommended the consolidation of the several sewers Commissions, whose chequered history has been told by Mr. and Mrs. Webb, in their fascinating volume on Statutory Authorities, into a single body with additional statutory powers. An Act was passed on these lines in 1848, a separate Act being passed in the same session for the City of London. In 1855 a step was taken towards the creation of a system of self-government for London in the establishment of the Metropolitan Board of Works. London had a number of governing authorities; the City Corporation, some thirty vestries for large parishes, a number of district boards for groups of smaller parishes, besides boards of guardians and other bodies for special purposes. These different bodies were to join in electing forty-six members of a central body known as the Metropolitan Board of Works. Before its dissolution in 1888 this body had fallen into disrepute, and it is easy to see that its composition and arrangements were ill-designed to excite the imagination or ambition of Londoners who wanted to serve their city. Its chief achievement was the construction of the Thames Embankment.

The refusal of Parliament to continue the Board of Health in 1854 was in some degree a blow not at the general principle of public control, but at the spirit of its chief servant. Chadwick, who had earned a great unpopularity by his administration of the Poor Law before he came to the Board of Health, was not a good choice for a body which had such large powers of interference, and therefore such abundant opportunities for friction. *The Times* described the Chadwick regime: "It was a perpetual Saturday night, and Master John Bull was scrubbed and rubbed and small tooth-combed till the tears ran into his eyes, and his teeth chattered, and his fists clenched themselves with worry and pain." It is doubtful whether the Member who said that England wanted to be clean but not to be cleaned by Chadwick spoke the whole truth, but he spoke part of the truth. At any rate, when the Government threw Chadwick to the wolves (it is discreditable to them that Chadwick was put on the shelf instead of being given another task) they preserved part of his scheme. The place

of the anomalous body created by the Act of 1848 was taken by a Board of Ministers with a paid President. In 1857 the duties of the paid President were transferred to the Vice-President of the Education Committee of the Privy Council. In 1855 the Board was in the hands of one of Chadwick's critics, Sir Benjamin Hall, but Hall was himself a reformer, and further progress was made under his rule.

In 1858 Derby's Government dissolved the Board of Health, giving some of its duties and powers to the Home Secretary and others to the Privy Council. In the same Act it enlarged considerably the powers of the local authorities, extending further the arrangement by which they could adopt Model clauses.

It looks as if the energy for reform generated by the inquiries and the panics of the 'forties had now been exhausted, and further education was needed before successful action could be taken. This was supplied by the very important Sanitary Commission set up by Disraeli in 1868, in reply to an appeal from leading doctors. A few weeks later he went out of office. Gladstone's Government appointed a new Commission, with C. B. Adderley (afterwards Lord Norton) as Chairman. Adderley, who had been President of the Board of Health, had both enthusiasm and knowledge. The Report produced by his Commission in 1871 was a document of the greatest value. It gave the first comprehensive survey of the state of English local government. The picture it gave could not be better described in a sentence than it was by Goschen: "The truth is that we have a chaos as regards authorities, a chaos as regards rates, and a worse chaos than all as regards areas."

County government was still in the hands of Quarter Sessions, though as early as 1835 Hume had urged the reform of this anomaly. In 1850 Milner Gibson introduced a Bill to create a County Board composed half of Justices, half of direct representatives of the rate-payers. Peel supported this Bill. In 1861 Mill had argued for the reform of county government in his book on Representative Government.

Rural government in the eighteenth century had been in the hands of the parish, and these small units, served at first by unpaid overseers, were entrusted with the duties of looking after the poor, the sick, the idle, the unemployed, the vagrant, and the old. In 1834 the parish had been merged in the union for most of these purposes by the new Poor Law. These rural districts had in 1871 no sanitary government at all. Their only protection against dirt and disease was the law which gave Justices of the Peace summary jurisdiction over

nuisances at Petty Sessions if the Board of Guardians laid an information. In urban districts the powers exercised by Town Councils, Improvement Commissions, and Local Boards were neither effective nor uniform. Fifteen Public Health Acts had been put on the Statute Book, but their administration had been confided to local authorities whose areas and functions often overlapped. It is not surprising that Adderley's Commission found that the administration of the sanitary laws passed by Parliament was badly administered in the towns and not administered at all in the country.

If there was chaos in the country there was confusion at the centre. When the Board of Health was dissolved in 1854 certain of its duties and powers were transferred to the Home Office, and a branch was created in that department known as the Local Government Act Department, which looked after local loans and local bye-laws. Its medical functions were assigned to the Privy Council. But there was a third authority which had much greater power and experience behind it. This was the Poor Law Board. The famous Poor Law Commission mentioned already in this chapter lasted till 1847, when it was converted into the Poor Law Board, a Government Department of the usual kind. The Boards of Guardians, who had the power under the Nuisance Removal Act of 1848 of laying an information before Petty Sessions, were under this Department.

When Gladstone formed his Government in 1868, he sent Goschen to the Poor Law Board, and Goschen produced two revolutionary Bills: one dealing with local taxation, the other with local government. He proposed to set up a complete system of local government for parish and county. His plan provided for restoring the parish as an effective unit. The ratepayers of the parish were to elect a Parochial Board with a chairman. The chairmen of parishes grouped in petty sessional divisions were to elect half the members of County Financial Boards, the other half being composed of Justices of the Peace.

This ambitious plan had no chance, and Goschen's successor, Stansfeld (for Goschen was sent to the Admiralty after a short term at the Poor Law Board), turned to the recommendations of the Adderley Commission. He introduced and passed in succession two Bills. The first created the Local Government Board. To this new Department were transferred the officials of the Poor Law Board, of the General Register Office, of the Local Government Branch of the Home Office, and of the Medical Department of the Privy Council. His second Bill, passed in 1872, set up the Boards of Guardians as sanitary authorities

in rural districts, following in this the advice of the Adderley Commission. He was unable, however, to carry his whole Bill, and he found that in order to save its machinery he had to sacrifice a great part of its power. "The Bill, as now framed," said the *Local Government Chronicle*, when the clause about hospitals, dispensaries, gas, water buildings unfit for habitation, and the pollution of streams had been dropped, "does little more than divide the country into sanitary districts and provide for the constitution of the new sanitary authorities." Disraeli had to appeal to his party to let the Bill proceed even after these concessions had been made to the fears of property, and he explained that the Bill proceeded on the right lines and covered effectively one part of the general problem. Disraeli's Government which took office in 1874 put on to the Statute Book the proposal relating to nuisances that Stansfeld had had to abandon, and his two Acts of 1874 and 1875 strengthened and codified the laws relating to public health, consolidating and improving no fewer than forty-three statutes. In this way Disraeli struck a great blow for the cause that he had summed up in a speech at Manchester, "*sanitas sanitatum, omni sanitas.*"

The Poor Law Commission had been a bad precedent for the first Board of Health: the Poor Law Board was a bad influence on the Local Government Board. When Stansfeld was making that Department in 1871, he was merging into one Department three separate organizations. Of these much the most powerful was the Poor Law Board, and the Local Government Board took its colour and its tone from the strong traditions and strong personalities of that Board. Disraeli confirmed this influence by choosing as Stansfeld's successor in 1874 Sclater Booth, a junior Minister who had been Parliamentary Secretary to the Poor Law Board in 1867-8.

Down to this time no statesman of the first rank had had any training in local government. In the 'seventies a man came into public life for the first time from this school. Joseph Chamberlain was one of a group of enlightened men who, ashamed and horrified by the conditions that had produced a death rate of 53 per 1,000, determined to put an end to the neglect and misgovernment of Birmingham. Chamberlain was elected Mayor, and after his three years of office Birmingham found itself a pioneer, as Liverpool had been a pioneer in the 'forties. Public enterprise was seen at its best, and most courageous, in the destruction of slums, the adoption of great housing schemes, the acquisition and development of gas and water under-



takings, the provision of parks and recreation grounds, and the establishment of the Birmingham School of Art. In 1876 the leader of this vigorous and triumphant campaign entered the House of Commons; four years later he entered the Cabinet.

Under happier conditions the introduction of such a man to the governing world would have been followed by most important reforms. Yet the Government of which he was a member was so distracted by its foreign troubles and its domestic divisions, that it was the only Government since these agitations had begun that did not pass an important local government reform. It worked at two such questions. Harcourt, the Home Secretary, prepared an ambitious Bill for London. He proposed to reform the City Corporation, to make it a popular body, and to give it the government of all London. Chamberlain would have preferred to set up a central City Council with borough councils elected at the same time, but he accepted Harcourt's plan. A more serious difference arose over the police. Gladstone and Chamberlain were both anxious to give London the control of its police; Harcourt, whose head was full of the Fenian conspiracies, was determined to keep the control in the Home Office. This difference would have mattered less if there had been more enthusiasm in the House of Commons for the Bill, but according to Dilke, there were only three members who really cared about it: himself, his colleague as Member for Chelsea, J. F. B. Firth, and Gladstone. If the reform of the government of London fell through, the same fate overtook Dilke's own scheme for reforming local government by setting up district councils and county councils. The chief contribution made by the Government was the setting up of a Royal Commission on Housing in answer to a suggestion from Salisbury.

In 1871, as we have seen, Goschen had wished to give governing authorities to the county and the parish. These ambitions were still unfulfilled, though plans had been drawn up by Dilke and Lord Edmond Fitzmaurice, who had made himself master of these questions. Both ambitions were fulfilled in the next ten years. In 1888 Lord Salisbury's Government passed its famous County Councils Act, and in 1894 Gladstone's Government passed the Parish Councils Act.

The Act of 1888 set up county councils on the pattern of borough councils, and transferred to them all the administrative functions hitherto exercised by the Justices of the Peace. The control of the police was vested in a joint committee of the council and the Justices of the Peace. The councils are composed of councillors directly elected

by the ratepayers for three years and aldermen elected by the councillors for six years. The author of the Act was C. T. Ritchie, who deserves to rank in this connection with Forster in connection with education. The reluctance of the old-fashioned country gentlemen to surrender the power of Quarter Sessions might have been a considerable obstacle if it had not been for the Unionist alliance. Lord Salisbury reminded his followers that they could not have the support of the Liberal Unionists without paying something for it. The Cabinet had originally discussed some method of softening the fall of the Quarter Sessions, but Salisbury himself held that the squirearchy had already been made to surrender most of its power to officials of Government departments, and that the new reform meant only a sentimental loss.

The other reform that Goschen had outlined in 1871 was carried in 1894, when Gladstone's Government set up District and Parish Councils. The debates in the House of Commons lasted forty-one days, and the Lords made a number of amendments. The controversy between the two Houses over the Bill is famous as the occasion of Gladstone's last speech in the House of Commons.

With the passing of this Act it could be said that the "whole field of internal administration, if we except the City of London, now lay under the control of popularly elected bodies."<sup>2</sup> The Parish Councils Act marked an important advance in democracy, for it made women eligible as district and parish councillors. In 1907 an Act was passed making women eligible as borough and county councillors.

The adjustment and readjustment of the relations of local authorities with one another and with central departments is a constant problem, as we can see from the legislation that has been passed since 1894. In 1870 Parliament set up special authorities for education in the School Boards, in 1902 Parliament abolished them and transferred their duties to the county councils. Before 1888 there was a good deal of discussion about the form that the self-government of London should take. Harcourt in preparing his Bill in 1884 had contemplated a Bill much on the lines that Ritchie adopted in 1888; in 1899 Salisbury's third Government checked the tendency to this concentration of power, setting up twenty-eight borough councils. In 1834 Parliament had set up Boards of Guardians for grouped parishes as the Poor Law authority; in 1872 these bodies had been made the sanitary authorities in rural districts; in 1894 they were put on a democratic franchise.

<sup>2</sup> Redlich and Hirst, *Local Government in England*, Book I, p. 213.

and made the rural district councils in places where a Poor Law union coincided with a rural district; in 1929 they were abolished and their place was taken by the newly created Public Assistance Committees of the county councils. As one problem after another has ceased to be a local problem, and the range and scope of administration have been affected by changes of transport and population, all the problems concerned with areas and functions have taken new forms and demanded new solutions. After the war there was a widespread demand for reconstruction, for the proper conservation and use of resources that were national not less than local in their importance, and for a recognition of the truth that in respect of water, electricity, transport, and many other matters the powers and areas of local governing authorities were inadequate and out of date. These problems were investigated by Committees, and later by a Royal Commission which issued three reports, in 1925, 1928, and 1929. The Act of 1929, which among [other] things abolished, as we have seen, the Boards of Guardians, gave effect to some of the recommendations of this Commission, enabling local authorities to combine for special purposes. The confusion at the centre has also been remedied by the creation after the war of departments like the Ministry of Health and the Ministry of Transport, both of which were established in 1919. Many problems have also been simplified by a modern device of great value; the device of setting up bodies that are partly official and partly unofficial, partly bureaucratic and partly representative. In this way a new relationship has been established between public and private enterprise. Examples of this kind of body are the Port of London Authority established in 1908; the old Road Board established in 1909; the Electricity Commission established in 1919 and reorganized in 1929.<sup>2</sup>

II, then, a reformer who had grown grey in the struggles of the nineteenth century over local government were to revisit England to-day he would find that some of the problems that occupied the mind of his age occupy the mind of ours. But he would be chiefly struck by the scope and importance of the new tasks that now fall to local authorities. This is the result partly of the energetic teaching of thinkers; partly of the successful experiments of the early London County Council; partly of the democratic movement that started in 1906. In the first class the most important influence, of course, was

<sup>2</sup> A lucid survey of this field has lately been published, *The New Philanthropy*, by Elizabeth Macadam (Allen & Unwin).

the early Fabian Society. Mr. and Mrs. Webb, Graham Wallas, Bernard Shaw did for their generation what Chadwick had done for his. With the help of thinkers outside such as H. G. Wells and J. A. Hobson, they taught the nation to take a much larger and more imaginative view of the opportunities and responsibilities of local government. They found encouragement and occasion in the early life of the London County Council when men of great ability and distinction took part for the first time in the government of London. The reforming zeal and large spirit of the Council in its first ten years, largely guided by this new teaching, gave an impetus and example to local patriotism which did even more to educate the public mind than Chamberlain's career in Birmingham had done in the 'seventies. A further stimulus was given by the democratic temper that inspired politics after the reaction from Imperialism in the early years of the century. Its spirit was seen in the reforms which began with the first Town Planning Act passed by John Burns in 1909. This Act, which enabled local authorities to prepare schemes for the development of particular areas, was followed by a series of Acts all increasing the powers of local authorities, passed in 1919, 1925, 1929, and 1932. In these Acts it has been recognized that the care of amenities, the designing of towns and suburbs, the preparation of schemes for harmonious development in the future are part of the duties of Government. The same sense of public needs inspired the Housing Acts of 1909, 1919, 1921, 1923, 1924, 1925, 1930, which have applied a new and more drastic treatment to a problem neglected in the past and still baffling in the present.

Bacon said that it was the duty of Parliaments to find remedies as fast as time breedeth mischief. Nobody looking back on the hundred years since 1835 could say that this duty has been fulfilled. We see all round us the consequences of delay, neglect, false starts, and mischievous fears. But nobody would say of this record that it is the record of a people entirely wanting in initiative and resilience, qualities that are urgently needed for the immense tasks that lie ahead of our civilization.

*Central Control\**

## 1. BY THE COURTS

## I

A LARGE part of the early history of the English Constitution is occupied by the story of the successive attempts to control local jurisdictions. The attempts were not fully successful until the reign of Henry VIII. Then, their success paved the way for their downfall. The whole organization of central control was abolished with the Star Chamber, and, apart from the investigation of municipal charters under the last two Stuarts, all administrative forms of control ceased. There remained only the normal jurisdiction of the common law courts to supervise the activities of local judicial bodies, and the slight and rarely exercised powers of the Home Office in respect of peace and good order.

Consequently, the central government allowed the local authorities of the eighteenth century to govern as they thought fit. "The justices of the peace," say the Webbs,<sup>1</sup> "enjoyed in their regulations an almost complete and unshackled autonomy. Unlike a modern county council making byelaws, quarter sessions was under no obligation to submit its orders for confirmation to the Home Secretary or to any other local authority. Moreover, the justices were, in their own counties, not only law-makers, but, either collectively or individually, themselves also the tribunal to adjudicate on any breaches of their own regulations. Again, the juries of the manor, of the court of sewers, of the hundred, and of the county, were always 'interpreting' the local customs, and restricting or extending the conception of public

\*H. J. Laski, W. I. Jennings, and W. A. Robson (eds.), *A Century of Municipal Progress* (George Allen & Unwin, 1935). Reprinted by kind permission of the author and the publishers

<sup>1</sup> *Statutory Authorities*, p. 352.

nuisances, active or passive, according to contemporary needs, or new forms of the behaviour of individual citizens and corporate bodies; whilst the inhabitants in vestry assembled, or the little oligarchy of parish officers, were incurring (and meeting out of the ancient church rate) expenditure on all sorts of services according to local decision, without any one having any practical power of disallowance. As for the municipal corporations, they regarded their corporate property, their markets, their tolls, their fines and fees, as well as their exemptions and privileges, as outside any jurisdiction other than their own."

This does not mean, as some have inferred, that such "local authorities" could do as they pleased. They derived their authority from law, and they could be kept within the limits of their powers by the superior courts of law. What it means is that there was no central body outside the courts which took cognisance of their activities. There remained a judicial control; but it was a control exercised only in individual cases, when some person took steps to challenge as illegal some action which an "authority" had taken. The parish officers were subject to the control of quarter sessions; but the manor, the municipal corporation, and quarter sessions itself were subject to no control except that of the superior courts.

## II

When the modern local government lawyer thinks of judicial control, the words which leap to his mind are "*ultra vires*." That phrase was not unknown at the end of the eighteenth century. The *New English Dictionary* refers to a footnote in Hutcheson's *Justice of the Peace*, published in 1806. But it was certainly not in common use as expressing a doctrine. It is not mentioned either in the analysis of contents nor in the index in the standard work on corporation law, Grant on *Corporations*, written in 1850. Brice on *Ultra Vires* was not published until 1874.

Brice says<sup>2</sup> indeed that the doctrine is of modern growth. "Its appearance as a distinct fact, and as a guiding or, rather, misleading principle in the legal system of this country, dates from about the year 1845, being first prominently mentioned in the cases, in equity, of *Colman v. Eastern Counties Rly. Co.*<sup>3</sup> in 1846; and at law, of *East Anglian Rly. Co. v. Eastern Counties Rly. Co.*<sup>4</sup> in 1851. At the period

<sup>2</sup> *Ultra Vires* (2nd edn., 1877), pp. 10-12.

<sup>3</sup> 10 Beav. 1; 16 L.J., ch. 73.

<sup>4</sup> 11 C.B. 775; 21 L.J.C.P. 23

now mentioned the great railway companies were being projected and developed. For the making of these lines there were required larger funds than any partnership, however numerous, could possess, and compulsory powers of a description utterly beyond the royal prerogative to confer by Charter on any individual or association. Consequently application was made to the Supreme Legislature, by whose sanction corporations were called into being, authorized to raise the necessary capital by methods analogous to those used by joint stock companies already in existence, and authorized to acquire, by coercive means where amicable overtures were rejected, the lands, houses, easements, and other proprietary rights needful for the profitable prosecution of the undertaking. Scarcely had these bodies been created than questions were raised as to the exact nature of the powers and other incident so conferred upon them." Hence the need for the courts to determine the legal status of these corporations, and hence the doctrine of *ultra vires*. "It is thus the creature purely of judicial decision. It was originated by the courts *proprio motu* upon grounds of public policy and commercial necessity, and to meet and provide for circumstances which called for the intervention of some strong hand, but for which the State had not directly provided."

This statement is historically correct, but it must not be taken to mean that local authorities in the eighteenth century could do as they pleased. Strictly speaking, an act is *ultra vires* if the Corporation has no legal power to do it. Now it is quite obvious that when quarter sessions or a municipal corporation before 1835 wanted to do an act there had to be some legal authority for it. Neither body could enlarge its own jurisdiction. Consequently, it would have been possible to write of *ultra vires* acts before 1835. The term was not used because, in the main, it was developed to cover special types of action under alleged statutory authority. Quarter sessions and corporations had their constitutions determined by common law. The justices of the peace, it is true, administered "stacks of statutes," and quite frequently the courts were called upon to determine the extent of the powers which they gave. Such a book as Bott's *Poor Laws* and the mass of case law in the successive editions of Burn's *Justice of the Peace* bear witness to the importance of the courts in this respect. But the justices and the constables had large powers at common law, while the manors and the boroughs proved their privileges by reference not to statutory authorities but to grants, local customs, and privileges established by prescription.

Indeed, the term *ultra vires* was rarely used of the justices. It was useful to denote an act committed without statutory authority by one of those independent statutory authorities which became common by the end of the century. It was necessarily applied to the railway companies and the other joint stock companies established in the first half of the nineteenth century. It came to be applied to municipal corporations when it was shown that the Act of 1835 had fundamentally altered their nature. From them it was extended to the new statutory authorities, the urban and rural sanitary authorities, the county councils, the urban and rural district councils, and the metropolitan borough councils. The earlier law books were concerned not with *ultra vires* but with jurisdictions and powers; they were concerned, that is, with the positive and not the negative aspect of powers. Brice on *Ultra Vires* was the same kind of book as Kyd or Grant on *Corporations*. The growth of the statutory corporations had, however, emphasized the importance of interpreting the empowering provisions of statutes, and of determining what happened if a contract was entered into, or property was acquired, or a tort was committed, outside the ambit of those powers. The subject then became so immense that a book on "Corporations" was impossible. Hence such books as Arnold on *Municipal Corporations* (and this title ceased to cover a separate branch of the law when the Local Government Act, 1933, generalized the law as to the organization of local authorities) and Buckley on *Companies*. The only topic common to all corporations was then the nature and consequences of the doctrine of *ultra vires*. Street on *Ultra Vires*, unlike the book of Brice's on which it was founded, is not a treatise on corporations, but a treatise on *ultra vires*.

### III

Municipal corporations were brought within the doctrine because of the change in their legal nature produced by the Municipal Corporations Act, 1835. They ceased to be forms of property and became instruments of government. The Act, says Brice,<sup>5</sup> "completely altered their nature, constituting them trustees of their corporate property for public purposes, and impressing a trust upon this property." This principle was arrived at by the courts in their interpretation of section 92 of the Act of 1835<sup>6</sup> and shortly after the Act came into force. It

<sup>5</sup> *Ultra Vires* (2nd edn.), p. 227.

<sup>6</sup> Afterwards s. 143 of the Municipal Corporations Act, 1882; and now s. 185 of the Local Government Act, 1933.



is to be found clearly expressed in the judgment of Lord Chancellor Cottenham in *Attorney-General v. Aspinall*<sup>1</sup> in 1837, where it was also held that the Court could intervene by injunction on an information filed by the Attorney-General. This decision was followed by Lord Cottenham in *Attorney-General v. Poole Corporation*<sup>2</sup> and *Attorney-General v. Wilson*.<sup>3</sup> In *Attorney-General v. Lichfield Corporation*,<sup>4</sup> Lord Langdale, M.R., held that a corporation might be restricted from using the proceeds of a rate, or levying a rate, for *ultra vires* purposes; and this judgment was affirmed by Lord Cottenham. The rule remains law to the present day.<sup>5</sup>

The rule laid down in *Attorney-General v. Aspinall* referred to the corporate property, and all the earlier cases similarly dealt with dispositions of property. The municipal corporation had certain governmental powers under the Act of 1835, but the raising of rates still tended to be guarded as something exceptional. By successive statutes, however, functions were given to borough councils without any additional source of revenue. They were allowed to spend money on public baths and wash-houses,<sup>6</sup> libraries and museums,<sup>7</sup> literary institutions,<sup>8</sup> lunatic asylums,<sup>9</sup> bridges,<sup>10</sup> recreation and pleasure grounds,<sup>11</sup> and highways.<sup>12</sup> And after 1872, if not before, they became public health authorities under the legislation that was consolidated in the Public Health Act, 1875. The corporate property no longer sufficed for the expenses involved, the levying of rates became one of the normal functions of the borough councils, and the control of the courts over *ultra vires* expenditure became a control not so much over the disposition of the corporate property as over the use of a borough fund that was fed at regular intervals by contributions from the ratepayers. The principle was, however, the same, and was indeed admitted in *Attorney-General v. Lichfield Corporation*.<sup>13</sup>

<sup>1</sup> 2 My. and Cr. 613.

<sup>2</sup> (1838) 4 My. and Cr. 17.

<sup>3</sup> (1840) Cr. and Ph. 1.

<sup>4</sup> (1848) 11 Beav. 120.

<sup>5</sup> See cases quoted in Jennings, *Local Authorities* (1934), pp. 252-56.

<sup>6</sup> 9 and 10 Vict., c. 74.

<sup>7</sup> 8 and 9 Vict., c. 43; 18 and 19 Vict., c. 70; 29 and 30 Vict., c. 114; 34 and 35 Vict., c. 71.

<sup>8</sup> 17 and 18 Vict., c. 112.

<sup>9</sup> 16 and 17 Vict., c. 97; 18 and 19 Vict., c. 105; 25 and 26 Vict., c. 111; 28 and 29 Vict., c. 80.

<sup>10</sup> 13 and 14 Vict., c. 64.

<sup>11</sup> 22 Vict., c. 27.

<sup>12</sup> 25 and 26 Vict., c. 61.

<sup>13</sup> *Supra*.

## IV

The cases quoted above are cases in which the Attorney-General contended that corporate funds or property had been used for purposes which were *ultra vires*. He sued as protector of the rights of the public because funds or property were being deflected to purposes which Parliament had not authorized. He acted in precisely the same way as he acted in relation to charitable trusts. Indeed, in one of the early cases Lord Cottenham said that the trust imposed upon corporate property by the Act of 1835 was, in the legal sense, a charitable trust. An action in equity at the suit of the Attorney-General was therefore the appropriate remedy. This jurisdiction in equity was extended after the Judicature Acts by the grant of a power to make a declaration of law whether any substantive remedy, such as an injunction, was or could be claimed. The growth of extra-judicial methods of control, such as the district audit, has extended the importance of this jurisdiction.<sup>20</sup>

Nevertheless, alternative remedies have been developed at common law. This is probably due in part to the fact that most local government lawyers are common lawyers and that, in spite of the Judicature Acts, there is still a distinction between those counsel who reside in the Temple and practise before the King's Bench Division and those counsel who reside in Lincoln's Inn and practise before the Chancery Division. But in addition the remedies of prohibition and certiorari are more appropriate where the allegation is, not that the act is or may be *ultra vires* in itself, but that it is or may be *ultra vires* because of the manner in which the decision has been or is about to be taken.

The development of this branch of the law is comparatively modern. It is significant that Brice, writing in 1877, does not mention the jurisdiction, though he does incidentally quote a few cases in which certiorari was used.<sup>21</sup> On the other hand, Street, writing in 1930,<sup>22</sup> discusses the matter at considerable length. Apart from the fact that a suit in equity for an injunction or a declaration was usually a more convenient remedy, the difficulty was that prohibition and certiorari were remedies used to prevent or quash actions by inferior courts which were outside their jurisdiction. It is only since the growth of the quasi-judicial functions of administrative authorities has been

<sup>20</sup> See *Attorney-General v. Merthyr Tydfil Union*, [1900] 1 Ch. 516; and Jennings, *Declaratory Judgments against Public Authorities*, 41 *Yale Law Journal*, pp. 407-24.

<sup>21</sup> *Ultra Vires* (2nd edit.), p. 491.

<sup>22</sup> *Ultra Vires*.

brought to the notice of the judges that they have definitely admitted that a local authority in dealing with individual cases is a "court."

Possibly the extension of the idea of "court" so as to permit certiorari to quash was made easier by the fact that an amending Municipal Corporations Act of 1837, in section 44, authorized the bringing up by certiorari of orders for payment by a borough council. This jurisdiction was exercised in a number of cases,<sup>21</sup> and was reproduced in section 141 of the Municipal Corporations Act, 1882, section 80 of the Local Government Act, 1888, and section 9 of the London Government Act, 1899. It must be admitted, however, that the decisions on which the modern rule is based were cases of certiorari or prohibition against central governmental bodies. Statutory provision was made for certiorari in respect of poor law orders,<sup>22</sup> and there were similar provisions in respect of tithe commissioners.<sup>23</sup> But in *R. v. Local Government Board*<sup>24</sup> in 1882 Brett, *L.J.*, laid down a broad principle which has been much relied upon in more recent cases. "My view of the power of prohibition at the present day is that the Court should not be chary of exercising it, and that wherever the Legislature entrusts to any body of persons other than the superior Courts the power of imposing an obligation upon individuals, the Courts ought to exercise as widely as they can the power of controlling those bodies of persons, if those persons admittedly attempt to exercise powers beyond the powers given to them by Act of Parliament."

This statement was referred to in *In re Local Government Board*<sup>25</sup> as "general sailing orders for future times." It was clearly dictated by the notion that the judicial activities of public authorities were exceptional and that the superior courts, which were the natural bodies to exercise judicial functions, should use all the remedies which could be made available for keeping narrowly within their limits the authorities exercising such powers. The courts were not slow to follow this lead, and a series of cases from 1882 onwards illustrates the rapidly developing notion of "court," both for prohibition and for certiorari. The nineteenth century cases are by no means consistent, and they do not in fact recognize that a local authority may be a "court."<sup>26</sup> But a

<sup>21</sup> See Short and Mellor, *Crown Office Practice* (2nd edit.), p. 75.

<sup>22</sup> Poor Law Amendment Act, 1834, ss. 105-7; Poor Law Amendment Act, 1849, s. 13. See the cases quoted in Robertson, *Proceedings by and against the Crown*, p. 128.

<sup>23</sup> See Robertson, *op. cit.*, p. 129.

<sup>24</sup> 10 Q.B. 309.

<sup>25</sup> (1885) 16 L.R. Ir. 150; 18 L.R. Ir. 509.

<sup>26</sup> See cases quoted in Short and Mellor, *op. cit.*, pp. 81-83; and Robertson, *op. cit.*, pp. 122-30.

new line of decision begins with *R. v. Woodhouse*.<sup>29</sup> There the Court of Appeal made it quite definite that a "court" was a body which exercised judicial functions, and that judicial functions were functions which were not ministerial.

Now, every function of local authority which involves a decision taken in respect of an individual, and which is not in pursuance of a mandatory statutory provision or of a specific and legal Departmental order, is in this sense judicial. This was made quite clear by the decision of the Court of Appeal in what is now the leading case, *R. v. Electricity Commissioners*,<sup>30</sup> and in *R. v. Minister of Health, ex parte Davis*.<sup>31</sup> Accordingly, it is not surprising that the Court of Appeal has regarded the grant of a cinema licence by a local authority as a judicial function,<sup>32</sup> and that the Divisional Court has regarded the grant of permission to develop land under an interim development order as being similarly a judicial function.<sup>33</sup>

Thus, it may now be laid down as a general proposition that every decision of a local authority which has reference to an individual and which involves the exercise of a discretion is a "judicial determination." The local authority is then a "court," and if the decision or proposed decision is *ultra vires*, or if the decision has been taken in some improper way, the courts have power to intervene by certiorari or prohibition. The relation of this common law method of control to the equitable method of control by injunction or declaration has never been investigated, and it appears likely that the choice of remedy is largely determined by the experience of counsel retained for the persons who propose to challenge the order.

In some cases, however, the common law control by certiorari has proved to be noxious to good and efficient administration. For certiorari might be sought, as in *R. v. Minister of Health, ex parte Davis*,<sup>34</sup> after the local authority has taken steps to put the order into execution. That case decided that a substantial number of schemes under the Housing Act, 1925, was illegal. As a result of the case and of the preliminary proceedings in *Minister of Health v. The King*<sup>35</sup>

<sup>29</sup> [1906] 2 K.B. 501.

<sup>30</sup> [1924] 1 K.B. 171.

<sup>31</sup> [1929] 1 K.B. 619.

<sup>32</sup> *R. v. L.C.C., ex parte Entertainments Protection Association*, [1931] 2 K.B. 215.

<sup>33</sup> *R. v. Hendon Rural District Council, ex parte Chorley*, [1933] 2 K.B. 696.

<sup>34</sup> [1929] 1 K.B. 619.

<sup>35</sup> [1931] A.C. 494.

a special procedure for obtaining a judicial verdict on housing schemes was inserted in the Housing Act, 1930. A similar provision was made by the Town and Country Planning Act, 1932, and by the Local Government Act, 1933. It seems likely that this precedent will be regularly followed, so that the importance of certiorari and prohibition in matters of local government will tend to diminish.\* In any case, complaints of the delay and expense involved in the issue of prerogative writs have resulted in a provision of the Administration of Justice (Miscellaneous Provisions) Act, 1933, under which Rules of Court may be made to simplify and cheapen the procedure.\*

## V

The remedies mentioned above are means by which the courts prevent or quash *ultra vires* acts. But an act may be more than *ultra vires*; it may injure an individual and so give him personally a right of action. Here the development of the doctrine of *ultra vires* has caused some difficulties. The principles applicable are for the most part not peculiar to local authorities, but are common to all kinds of corporations. It will be enough, therefore, to mention them without undertaking the long and painful task of tracing their history.

In respect of contracts, there were two difficulties arising out of the legal nature of a contract. A corporation can contract in two ways only. Either it binds itself by a contract under the corporate seal, or it is bound by a contract entered into on its behalf by a servant or agent. To ask a local authority to seal every one of its minor contracts was to ask an impossibility; and much of the time of the courts has been occupied in the development of exceptions to the general rule. In the case of local authorities the task was complicated by the special provisions of some of the Local Government Acts, especially section 174 of the Public Health Act, 1875. Those special difficulties have been swept away by section 266 of the Local Government Act, 1933. Also, the decision in *Lawford v. Billericay Rural District Council*<sup>†</sup> has swept away much of the old confusion about the legality of ordinary minor contracts. Much complicated case law remains;<sup>‡</sup> and it is a singular commentary on the efficiency of the judicial method that confusion so long remained.

\* Certiorari in respect of the district audit has been abolished.

† [Passage of the Crown Proceedings Bill at present (1947) before the House of Commons, would abolish the special position of the Crown in litigation and make it liable to prosecution in the courts. Ed.]

‡ [1903] 1 K.B. 772.

§ See Jennings, *Local Authorities*, pp. 330-32.

The other major difficulty was a direct result of the doctrine of *ultra vires*. Since a corporation has limited powers, its agents have no authority to enter into contracts for purposes outside those powers. The case law was in a state of confusion until this principle was settled by the House of Lords in *Ashbury Railway Carriage Co. v. Riche*,<sup>39</sup> and a mass of decisions has been necessary to indicate the working of the principle.<sup>40</sup>

Liability in tort was even more difficult to fix. Where there is a duty to act, and that duty is to an individual and not to the public, and where the duty is absolute, so that an intention to default or a negligent state of mind is not necessary, there is no reason why a corporation should not be as liable as a private person. But this combination of circumstances is rare. The principle was laid down in *Atkinson v. Newcastle Waterworks Co.*<sup>41</sup> But it was held in that case that the duty was to the public and not to the individual. Indeed, the decision in *Saunders v. Holborn District Board*<sup>42</sup> and other cases under the Public Health Acts show that normally general legislation imposing duties on local authorities creates general duties to the public, so that even an individual who has been specially injured has no special remedy.

As soon as one moves out of the field of absolute duties, difficulties arise. They are less obvious where negligence is essential to the cause of action. For negligence has come to imply not a state of mind, but a failure to take reasonable precautions. Consequently, though for a long time it was thought that a local authority could be liable only for misfeasance, it has been admitted since *Mersey Docks and Harbour Board v. Gibbs*<sup>43</sup> that the liability for negligence is the same as it is for a private person. The only exception is in respect of highways, where the earlier doctrine is maintained that liability is for misfeasance only.<sup>44</sup> This anomalous and slightly ridiculous exception is due to the strength of the earlier case law on this particular point and the failure of the House of Lords to sweep it away.

Where, however, the tort involves some mental element, greater difficulties have been encountered. For the act must be the act of an agent or servant. But clearly the agent or servant has no authority to commit torts; and it may well be said that any tort which he does

<sup>39</sup> (1875) L.R. 73, H.L. 65.

<sup>40</sup> See Jennings, *op. cit.* and *loc. cit.*

<sup>41</sup> (1877) L.R. 6 Exch. 404.

<sup>42</sup> [1895] 1 Q.B. 64.

<sup>43</sup> (1864) L.R. 1, H.L. 93.

<sup>44</sup> *Cowley v. Newmarket Local Board*, [1892] A.C. 325.

commit does not implicate his authority. Such lawyers' points have been ruthlessly swept away in the law of nuisance, and though the point is still unsettled, and there are apparently contradictory decisions, it may probably be asserted that a local authority will be liable for torts which are committed during the general course of the exercise of its legal functions.

It may be said generally that in their attitude to injuries caused by local authorities the courts have shown their technique at its worst. They have had to fit a new and rapidly growing branch of public law into a legal framework to which it was not appropriate. They put new wine into old bottles, and the bottles had holes in them already. They failed to lay down rational general principles at the outset, and they have caused delay, expense, and confusion by trying to induce general principles out of isolated cases. A few guiding ideas now stand out from comparatively recent decisions, and the old case law has fallen into the limbo of the forgotten. But it has to be remembered that that ancient case law caused endless confusion and expense to authorities who found themselves constantly in doubt as to their powers. If there is anything to be said in favour of the common law, it cannot be said of its application to local government.

## VI

The methods of judicial control so far examined have been primarily restrictive. Their purpose was to keep local authorities within the limits of the law. The purpose of control is not, however, to prevent authorities from acting, but to induce them to act wisely and well. Control by restriction may induce this by compelling authorities to refrain from unwise decisions. But its technique would be inadequate if it did not compel action. Apart from a declaration of law and an action for breach of duty, the only legal remedy available for compelling action is the writ of mandamus. This writ has been constantly used since the Municipal Corporations Act, though its importance has in recent years been overshadowed by the growth of certiorari and prohibition. In spite of this constant use, however, its principles have not substantially altered. Tapping on *Mandamus*, which was published in 1848, shares with Grant on *Corporations* and Chitty on *The Prerogative* the honour of remaining a standard work in spite of the changes of eighty years. The cases quoted in Short and Mellor's *Crown Office Practice* do not take the rules much further. Nor are there any more recent decisions of outstanding importance.

The explanation is two-fold. Where duties have been imposed upon local authorities some means of enforcing them have usually been provided. There has therefore been a remedy "equally beneficial, convenient, and effective," so that mandamus would not be issued. The other reason is even more important. Local government legislation commonly creates not duties but powers. The exercise of a discretionary power in the best possible way cannot be enforced by mandamus. And even where there is a "duty coupled with a power" mandamus can do no more than order the performance of the duty; the method of carrying it out is not one that can be controlled by the courts.

## VII

The general conclusions to be drawn from the past century are by no means favourable to judicial control. To some extent the defects are inherent in judicial control. It is a control exercised at the instance of individuals. Its purpose is to obstruct rather than to help. It is expensive and dilatory. It is capable of application only when rules of law are broken, not when they are applied legally but ineffectively. All this does not deny its necessity. Public authorities cannot be permitted to break the law, nor can they be trusted to interpret their own powers. Local authorities in particular affect the ordinary individual so closely that the risk of corruption or unfair dealing is always present. Superior administrative authorities may be too much concerned with the forwarding of a general policy to worry overmuch about the restrictions and petty tyrannies that may be imposed upon individuals. The existence of an independent authority, set up to see that the law is not warped for personal or partisan ends, is essential.

When we consider the actual practice of judicial control, apart from its inherent defects, we cannot feel satisfied. Much of the interpretation of the law has been unintelligent. The judge who has obtained a reputation as an authority on the common law has tended to delight in interpreting statutes in an obstructive manner. His bias has been against statutory innovations. He has believed that the *laissez-faire* that dominates the common law is a desirable doctrine, and that administrative interference is of necessity an evil. The judges usually have had no experience of the problem which local government has had to face; they have known only that property has had to bear new burdens. Yet when local government law has demanded the assistance of common law, when a complete and intelligent law of *recours contre l'administration* has been demanded, the common



law has been found wanting. The prerogative writs have been expensive and dilatory—though it may be hoped that powers in recent legislation will enable these defects to be remedied. Above all, the common law has given remedies to injured persons only slowly and reluctantly. One of the chief functions of the courts must be to protect the individual against all kinds of illegal interference. Yet the common law judges have seemed to assume that the task of the law was finished when the second Habeas Corpus Act was passed. It needed fifty or sixty years of litigation to establish the principle that normally, and subject to exceptions, a statutory public authority should be under the same liability for wrongs as a private individual. Even now there are doubts in the rule which can be resolved only by further litigation in the House of Lords.

If we compare this slow, partial, and expensive development with the development of French Administrative Law by the Council of State, and if we remember that the law as to remedies against Government departments has been in an even more regrettable state, we cannot fail to admit that there is some ground for the suggestion that a special administrative court would have been an advantage. Proposals to that end have been made," but they were rejected by the Committee on Ministers' Powers which reported in 1932." The reason given can hardly be regarded as satisfactory. It was apparently assumed that there can be no "rule of law" unless the law in question is the unsettled and in many respects unsatisfactory common law which has caused the major difficulties." It is, of course, obvious that law made by an administrative court would be as much law as that made by a court of common law. The argument is that it would be better law.

## II. BY WHITEHALL

### I

The essential inadequacy of judicial control was made evident by the end of the eighteenth century. Bentham's insistence on the need for administrative control was not dictated solely by this consideration. It was, no doubt, due in part to his complete distrust of lawyers. Whatever the reason, it was his criticism which produced the first

<sup>a</sup> See Robson, *Justice and Administrative Law*, ch. vi.

<sup>b</sup> Cmd. 4060.

<sup>c</sup> See Jennings, *The Report on Ministers' Powers, Public Administration*, vol. 10 pp. 333-51; and Jennings, *The Law and the Constitution*, ch. vi.

serious effort at central control since the Puritan Revolution. The Royal Commission on the Poor Laws recommended in 1834 the setting up of a new central administrative body to control the activities of the new local administrative authorities for the poor law which the Royal Commission proposed. Their proposals were essentially Benthamite. The hand of Edwin Chadwick, a former secretary of Bentham, was evident in their Report. The story of the rise and fall of the Poor Law Commissioners has often been told.<sup>49</sup> For most of the nineteenth century the poor law was the main stream of development of local government. It gathered to itself public health and educational functions. But in the end its importance was diminished by the rapidly increasing stream which sprang out of the Municipal Corporations Act of 1835. When, in 1930, the two streams met, it was the general local government stream which swallowed the stream of the poor law. If the "principles of 1834" may be held to include the principles of administrative organization, it must be said that, in the main, the "principles of 1835" triumphed over the "principles of 1834."

The Poor Law Amendment Act of 1834 was in its own sphere a revolution even more emphatic than that of 1835. It did not merely supersede nominated administrators by elected representatives. It also created new areas of administration and placed the elected guardians under central control. It did not merely supersede amateur officials by professionals; it also placed them under the control of central officials. In no other sphere of local government has central control become so close as in the poor law. In no other large sphere of administration was an attempt long persisted in to relate the area of administration to the needs of administration. The boroughs reformed in 1835 continued to cover their ancient areas, whether municipal or parliamentary. The counties reformed in 1888 continued to cover their ancient areas. The new urban and rural districts of 1875 and 1894 were carved out of the poor law unions, not because they were convenient areas for sanitary purposes, but because the legislative process was more easily applied to areas which were already defined. The parishes which were reformed in 1894 again covered their ancient areas.

The importance of the system of central control of the poor law lies not so much in the persistence of that control to the present day as in the example which it gave, the precedent that it provided, the

<sup>49</sup> See especially S. and B. Webb, *English Poor Law History, part ii: the Last Hundred Years*, vol. i, chs. i and ii.

lesson that it taught. The powers vested in the Poor Law Commissioners were transferred to the Poor Law Board in 1848 and to the Local Government Board in 1871. Consequently, when the Local Government Board was created in 1871, its most important control powers were those of the poor law. It is natural that poor law ideas should have been transferred, gradually, into other spheres of local government control. It is desirable, therefore, to begin by examining the powers of control under the Poor Law Amendment Act, 1834.

## II

It is interesting to notice that the Poor Law Commissioners were assumed to be a quasi-judicial authority. Not only were their orders made subject to certiorari, as has been mentioned already, but also they were given the right to summon witnesses, to hear evidence on oath, and to call for the production of papers. They were not, however, to inquire to any title, or to act as a court of record, though they were ordered to record their proceedings. Nevertheless, their functions were primarily administrative. By section 15 of the Act of 1834, the administration of relief to the poor was made subject to the direction and control of the Commissioners who were authorized to make rules, regulations, and orders for the management of the poor, the government of workhouses and the education of the children therein, the management of poor children, the superintendence of children's institutions, the apprenticing of poor children, the guidance and control of guardians and parish officers, the keeping, auditing, and allowing of accounts, the making of contracts, and expenditure on poor relief.\* General rules issued under this provision had to be submitted to the Secretary of State, and laid before Parliament, and might be disallowed by Order in Council within forty days.

By sections 23 and 25 they were authorized to order the alteration and enlargement of workhouses and (with the consent of the guardians) the building of new workhouses. By section 26 they were authorized to unite parishes for relief purposes (hence poor law "unions"), and section 32 gave them power to alter the boundaries of such unions.

Section 46 empowered them to direct the overseers or guardians to appoint such paid officers as the Commissioners might think necessary, to determine the mode of appointment and dismissal of such officers, the salaries paid to them, and the duties which they were to perform.\*

\* See now Poor Law Act, 1930, ss. 1 and 136.

\* Cf. Poor Law Act, 1930, s. 10.

By section 48, masters of workhouses and parish officers were made subject to the orders of the Commissioners and removable by them.<sup>51</sup> Section 52 empowered the Commissioners to regulate out-relief, with the intention that it should be abolished as soon as possible. By section 58 they were authorized to declare what relief should be granted by way of loan.<sup>52</sup>

These powers, together with powers relating to workhouses which were transferred to the Commissioners, remain substantially unaltered in the hands of the Minister of Health. The hands are the hands of Esau, but the voice is the voice of Jacob. In one direction, however, there has been a great development, and it has been extended to nearly all departments of local government. The district audit applies to all local authorities except borough councils, and to many of the accounts of borough councils.<sup>53</sup>

The Poor Law Amendment Act did not originate the system of district audit. It empowered the Commissioners to issue regulations for the appointment of paid auditors by the guardians. But in practice the Commissioners did nothing more than issue detailed regulations as to the auditor's duties, leaving the guardians to appoint whom they pleased, and to fix his salary. In 1844 a step further was taken. By the Poor Law Amendment Act of that year the Commissioners were empowered to combine the parishes and unions into districts for the audit of accounts, but left to the chairman and vice-chairman of the Board the power to appoint the auditors. Nevertheless, the Commissioners selected auditors for sixteen of the twenty-four new audit districts. Moreover, when the Poor Law Board was established in 1848, it was given a power, alternative to that of the courts, to hear appeals against disallowances and surcharges, and to remit any disallowance or surcharge where it considered that it was fair and equitable to remit it. Since the King's Bench had no such power of remission, the appeal to the Board was frequently preferred. By the Poor Law Amendment Act, 1868, the power of appointing auditors was transferred to the Poor Law Board. Finally, the system was reorganized by the District Auditors Act, 1879, under which the district auditors were paid out of moneys provided by Parliament, the amounts being recovered by stamp duties on the audited accounts.

<sup>51</sup> Cf. Poor Law Act, 1930, s. 45, and Relief Regulation Order, 1930.

<sup>52</sup> Cf. Poor Law Act, 1930, s. 49.

<sup>53</sup> For what follows, see Robson, *Law Relating to the Local Government Audit* (1930), ch. i.

The district audit was thus developed to provide an effective control of the administration of the poor law guardians. When the Local Government Act, 1929, transferred poor law functions to the councils of counties and county boroughs, this control was maintained. All the accounts of county councils were already subject to the district audit, so the Act of 1929 merely extended it to the poor law accounts of county borough councils. In the meantime, however, there had been a large extension of the jurisdiction of the district auditors. It was applied to urban and rural sanitary authorities (other than town councils) by the Public Health Act, 1875, and accordingly was extended to district councils (other than town councils) and parish councils and parish meetings by the Local Government Act, 1894. By the Local Government Act, 1888, and the London Government Act, 1899, it was extended to county councils and metropolitan borough councils respectively. It covered also any joint committee which is appointed by two or more of these bodies, or by one or more of these bodies and a borough council. By the Lunacy Act, 1891, it was applied to asylum accounts. By the Museums and Gymnasiums Act, 1891, to the museum or gymnasium accounts of an urban authority in the same way as to the other accounts of that authority, and a similar provision was contained in The Public Libraries Act, 1892. By the Isolation Hospitals Act, 1893, it was applied to hospital committees under that Act. By the Metropolis Water Act, 1902, it was applied to the Metropolitan Water Board. By the Education Acts (see now the Education Act, 1921) it was extended to all education accounts, and by the Rating and Valuation Act, 1925, it was applied to assessment committees.

Thus the audit is a generalized method of control applicable to all authorities except borough councils, and even to some borough accounts.<sup>4</sup> Indeed, some boroughs have adopted it completely under local Acts, and others under the Municipal Corporations (Audit) Act, 1933, or the corresponding provision of the Local Government Act, 1933.

The importance of the district audit varies somewhat according to the type of authority. A large authority normally appoints a competent staff of financial officers, and on their advice establishes a system of internal checks which is usually effective to prevent any except the most clever kinds of corruption and misappropriation. For

<sup>4</sup> See Local Government Act, 1933, s. 219, and Jennings, *Law Relating to Local Authorities*, pp. 289-90.

them the external audit is in itself of little value. An accounting officer has less difficulty in so "cooking" his accounts as to satisfy the district auditor. But the smaller authority has no effective system of financial control. The district auditor deals with many different accounts, and he keeps in touch with the developing technique of local financial control. He is thus able to make suggestions for internal checks, to prevent corruption, misappropriation, and even waste. In all cases, too, the auditor's report receives considerable publicity. He is open to receive complaints from ratepayers. Even though such complaints are rare, the existence of the right to make complaints must be some check upon ordinary extravagance in administration. Moreover, if there is any suspicion of malpractices, the Minister can, under powers originally conferred by the Audit (Local Authorities) Act, 1922, order the auditor to conduct an extraordinary audit.

These functions are important. But his really effective power is to prevent expenditure which is not authorized by law. The powers of local authorities are, as we have seen, strictly limited by law. The judicial methods of control are brought into application only when some ratepayer goes to the trouble and expense of taking proceedings. The district audit involves a regular investigation of the legality of every item of an authority's expenditure. Moreover, it is admitted since the decision of the House of Lords in *Roberts v. Hopwood*,<sup>55</sup> that unreasonable expenditure upon a service otherwise lawful is itself unlawful. Consequently he can object to expenditure on materials, salaries, wages, etc., which he regards as excessive. He fixes standards of expenditure to which local authorities must conform. This jurisdiction has been strenuously attacked by some<sup>56</sup> and defended by others.<sup>57</sup> Its effects may be seen in the decisions of Mr. Carson Roberts, which prevented the Poplar Board of Guardians and other bodies from fixing their wage rates at a high level, and which resulted in the enactment of the Audit (Local Authorities) Act, 1927. That Act altered the rules as to appeal and disqualified from membership of a local authority any person who had been surcharged for an amount exceeding 500 pounds.

### III

It has been pointed out already that there was a substantial difference between the principles enshrined in the Poor Law Amendment

<sup>55</sup> (1925) A.C. 578.

<sup>56</sup> Laski, *Studies in Law and Politics*, pp. 202 et seq.; Robson, *Development of Local Government*, pp. 307 et seq.

<sup>57</sup> Finer, *English Local Government*, pp. 318-20.

Act, 1834, and those enshrined in the Municipal Corporations Act, 1835. The Act of 1834 created new areas of administration for a single service and placed the new elected authorities under strict central control. The Act of 1835 provided for elected local authorities for the ancient municipal or Parliamentary boroughs; it regarded the new authorities as competent for a variety of services; and it did not establish any close central control. "The only approach to central control in the Municipal Corporations Act of 1835," say the Webbs, "is the section making it necessary for a corporation desiring to alienate any of the corporate real estate first to obtain the consent of the Lord Commissioners of the Treasury—a control transferred in 1871 to the Local Government Board."

Control over the borough councils and the other "general authorities" was introduced gradually as a control over the various services. These services, as they were contemplated in 1835, were three in number—police and public order, the maintenance of the roads, and public health. The other great functions of local authorities, such as education, housing, and town planning, were of much later origin.

Some elements of control over police and public order had been introduced long before 1835. This was, after all, the most ancient of the functions of "local authorities" in the widest sense. Yet for most of the eighteenth century the justices of the peace were left to maintain the "king's peace" as they chose; and the efforts of the Government were limited to occasional proclamations demanding vigilance and effective action. But, as the Webbs say, "no one, in ordinary times, took much notice of (the proclamations) and no attempt was made by the Government, either by calling for specific reports or by further investigation, to make the solemn formality effective." After the French Revolution, strenuous attempts were made to prevent the spread of "democratic" ideas by the passing of new and more stringent laws, especially laws against the expression of opinion and combinations of workmen, by the use of spies and informers, and by the use of the military in aid of the civil power.

In 1815 an Act was passed requiring prison authorities to furnish statistical reports of their gaols and houses of correction. In 1823 Sir Robert Peel secured the passing of an Act which not only consolidated the whole statute law relating to prisons, but also imposed upon local authorities the duty of organizing their administration uniformly

<sup>22</sup> *Statutory Authorities*, p. 465.

<sup>23</sup> *Ibid*, p. 460.

upon a prescribed plan, and of furnishing quarterly reports. This Act, applying to county quarter sessions, to the cities of London and Westminster, and to seventeen municipal corporations, was "the first that dictated to local authorities the detailed plan on which they were to exercise a branch of their own local administration; the first that made it obligatory on them to report, quarter by quarter, how their administration was actually being conducted; and the first that definitely asserted the duty of a Central Department to maintain a continuous supervision of the action of the local authorities in their current administration."<sup>80</sup> An Act of 1835 still further strengthened the control of the Home Office over prisons.

Sir Robert Peel moved into an entirely different orbit when he established the Metropolitan Police in 1829. For the new police were placed under the control of a Commissioner who himself was made subject to the control of the Home Secretary.<sup>81</sup> This precedent was not followed. Borough police were placed under the control of watch committees in 1835, and the county police were left in the hands of quarter sessions. In conformity with the general policy of the Municipal Corporations Act, there was no provision for the central control of the borough police; but when in 1839 quarter sessions were authorized to establish county police forces on the model of the metropolitan and borough police, the Home Office was given power to approve or disapprove the appointment of the Chief Constable and the number and pay of the county force. Also, the Home Secretary was empowered to issue rules for the government of the force.

When the provision of county police forces was made compulsory in 1856, a great step forward towards central control was taken. A grant of one-quarter of the cost of pay and uniform was authorized to be paid from national funds if the force was certified to be efficient. The Act authorized the appointment of Inspectors of Constabulary, who have become "the eyes of the Home Office in police matters."<sup>82</sup> The grant was increased to one-half of police expenditure in 1918. It proved to be an effective method of central control. For though no police authority is compelled to qualify for the grant, in practice the amount at stake is substantial. Councils dare not refuse the grant, lest the rates be increased. Moreover, the refusal of a grant is in itself a condemnation of the efficiency of the local authority, and much

<sup>80</sup> Webb, *Statutory Authorities*, p. 462.

<sup>81</sup> The "Bow Street runners" were, of course, agents of the Home Office.

<sup>82</sup> Troup, *The Home Office* (1925), p. 100.



can be made of this at local elections. The latter point is less effective in the counties than in the boroughs, for by a compromise made in 1888 the justices in quarter sessions, who owe responsibility to no one, were made partly responsible through a standing joint committee for police administration.

Still further control was obtained by the Police Act, 1919. The Home Office was empowered to make regulations, after consultation with the Police Council established under the Act, as to the government, mutual aid, pay, and conditions of service of the police forces. These powers were strengthened by the Police (Appeals) Act, 1927, under which any member of a police force who was dismissed or required to resign was given a right of appeal to the Home Secretary.

#### IV

The Home Office has thus retained and strengthened its control over police administration. Over two other services, highways and public health, it had exiguous control for a time. The association of highway administration and the preservation of the peace of the old manorial and county jurisdictions resulted in a similar association in the minds of those who began the reforms in the highway law. But the Highway Act of 1835 did not give any powers of control. Indeed, by diminishing the control of the justices over any "parish, township, tithing, rape, vill, wapentake, division, city, borough, liberty, market town, franchise, hamlet, precinct or any other place or district maintaining its own highways," it increased the autonomy of a host of local bodies. From 1835 to 1862 the efforts of the Home Office were directed towards getting through Parliament some legislation which would give some control to somebody. Not until 1862 did it succeed; and then it did not take any powers itself, nor did it try to induce anybody to exercise any powers. According to the Webbs,<sup>a</sup> this was and is characteristic of the Office. "Even if it does as much as send out a circular, it seems to consider it beyond its duty to take any steps to get the local authorities to take action, or to call upon them to report annually what action they are taking, or to supervise, from year to year, how they are administering (or possibly not administering) the powers entrusted to them. Least of all does the Home Office seek to guide the action of the local authorities, or even to bring about any uniformity of policy among them." Indeed, the first effective control of the highways came from the Local Govern-

<sup>a</sup> *The Story of the King's Highway*, p. 208.

Passenger Transport Board, not to speak of the Unemployment Assistance Board, the Central Electricity Board, and the centralized functions of the Ministries of Health, Labour, Transport, and Agriculture, such proposals do not appear so ludicrous in 1935 as they appeared to Sir John Simon in 1890. But they clearly indicate the centralizing tendency of the General Board of Health.

For all these reasons the angry opposition which the Board encountered is readily intelligible. All kinds of "interests," professional as well as industrial and political, arrayed themselves against it. The Board being appointed for five years only, the Government sought to renew its powers in 1854, though proposing to place it under a Secretary of State. The Bill was defeated, and a new Bill, abolishing the Board in all but name, and giving it a President capable of sitting in the House of Commons, was passed into law. Also it provided for the appointment of salaried engineers as inspectors, and forbade them from engaging in private practice. Mr. Chadwick went into retirement. The Act was renewed annually for four years. But in 1857 the Vice-President of the Education Committee of the Privy Council became President of the Board; and throughout this period the "Board" was always on the point of death. It expired in 1858 when the Public Health Act transferred its medical functions to the Privy Council and the Local Government Act handed over its other functions to the Home Secretary.

## V

The English public health system of the 'sixties was thus chiefly characterized by not being a system at all. . . . A Royal Sanitary Commission was set up in 1869 and it reported in 1871. It was given power to investigate central as well as local public health administration, and it exercised its authority. It recommended that "the administration of the laws concerning the public health and the relief of the poor should be presided over by one minister . . . whose title should clearly signify that he has charge of both departments: an arrangement which would probably render necessary the appointment under him of permanent secretaries to represent the respective departments." It must, however, avoid taking to itself the actual work of local government: it would leave *direction* only in the central power. "It will have to keep all local authorities and the officers in the active exercise of their own legally imposed and responsible functions; to make itself acquainted with any default and to remedy it; it will have also to discharge to a

greater extent its present duties . . . namely, to direct inquiries, medical or otherwise, to give advice and new plans when required, to sanction some of the larger proceedings of the local authorities, to issue provisional orders subject to parliamentary confirmation, to receive complaints and appeals, to issue medical regulations in emergencies, and to collect medical reports." It should therefore have full powers of supervision and inspection, and defined powers of control and direction over all local authorities. To this body should be transferred the Medical and Veterinary Department of the Privy Council, the Local Government Office, the Registrar-General's Office, and all sanitary powers and duties exercised by or under the Privy Council, the Home Office, or the Board of Trade.

The first legislative consequence of the Report was the enactment of the Local Government Board Act, 1871. Like most of the other "boards," the Local Government Board was a board only in theory. For practical purposes it was a department presided over by a minister. It took over, as the Report had recommended, the functions of the Poor Law Board and some of the functions of the Privy Council and of the Home Office. In the following year the Public Health Act of 1872 amended the constitution and powers of sanitary authorities, and in 1875 the great consolidated statute contemplated by the Report was passed. To give a list of the powers of the Board under that Act would be to set out a long catalogue. It had powers for hearing and determining appeals, for approving regulations and bye-laws, for acting in default of action by a sanitary authority, for giving consent to dealings with land, for making Provisional Orders, for appointing inspectors and holding inquiries, for making numerous orders, for sanctioning loans, and so on. Its powers in respect of public health did not then reach, and have never since reached, its Poor Law powers. Its methods of control were defective both in substance and in its method of administration." Nevertheless, it did valuable work in stimulating the backward authorities, even though it sometimes acted as a brake on more progressive authorities.

The Local Government Board was not strictly a Department of Health. The Public Health Act, 1875, contained many provisions relating to local government generally. The powers of the Board in this respect were increased by the subsequent legislation, notably of 1888 and 1891. It was concerned, too, with the Poor Law. Indeed it tended to apply the "Poor Law mind" to public health problems.

Moreover, the Home Office, the Board of Education (after 1902), and the Insurance Commission (after 1911) also had functions relevant to the public health. In 1919 the Board was superseded by the Ministry of Health, and some of these functions transferred to it.

Nevertheless, the Ministry of Health is as much a Ministry of Local Government as of Health. It is not the only department concerned with local administration, but it is by far the most important. Indeed, its effective control over public health came not through an extension of its public health powers in the strict sense, but through its powers over grants and loans—that is through the extension of its general local government powers.

## VI

The numerous control powers of the Ministry of Health may be divided into ten groups.<sup>67</sup>

In the first place, it has very large powers of making law by the issue of general or special rules, regulations, and orders. The agitation over the extension of delegated legislation by lawyers and publicists, notable chiefly for the publication of *The New Despotism* by Lord Hewart, was concerned primarily with the Ministry of Health—chiefly because the regulations of the Ministry frequently affect property rights, and the sanctity of property is supposed by some to be a fundamental maxim of the British Constitution.

In the second place, the Minister has a wide power of approving bye-laws, plans, and schemes made by local authorities. The power of sanctioning bye-laws is shared with the Home Office. But those which especially affect property are under the Public Health Acts. Moreover, those proving to be an inadequate method of controlling development, powers have been taken to approve schemes under the Housing and Town Planning Acts in such a way as to restrict very definitely the rights of landowners. Here again, therefore, there has been complaint from owners of property and lawyers.

In the third place, the Ministry has many appellate powers. A local authority is very closely in touch with its electorate. It may be dominated by a party majority and so favour the friends of the majority. It may, on the other hand, contain no effective opposition, and so be easily led to individual favouritism or even corruption. An appeal against some of its particular decisions is therefore necessary. The appeal in most cases raises questions of administrative policy. It almost

<sup>67</sup> For what follows, see Jennings, *Principles of Local Government Law*, ch. 5.

invariably involves technical issues which cannot effectively be divided by courts of law. Thus the Minister has what are called "quasi-judicial powers." " Here again, opposition has come from the legal profession and from other individualists who confound administration and executive or ministerial government.

Fourthly, the Ministry has some powers of acting in default of action by local authorities. Such powers are not numerous, nor are they effective. For the Ministry has no organization for itself conducting local administration. Their retention has been justified for use as a "big stick" if persuasion fails.

Fifthly, the Minister has control over certain kinds of officers, especially senior Poor Law officers.

Sixthly, he is able to send inspectors to investigate conditions. This is a regular part of Poor Law control, but until recently it has been exceptional in respect of public health and other functions.

Seventhly, extensions of local powers are largely under his control. He makes Provisional Orders, though they need Parliamentary sanction. And his advice is important when Parliament is considering local legislation.

Outside the Poor Law, however, these functions are not so important as his financial powers. His power of appointing district auditors has already been mentioned. Professional etiquette and *esprit de corps*, as well as the general policy of the Ministry, have restrained him from interfering with the discretion of the auditors. Instead, he is the normal court of appeal from their determinations. But his other financial powers, his control over grants and loans, are by far the most important methods of central control.

Grants are a comparatively recent source of local revenue. They originated in an entirely different sphere of local administration, in the grants given in aid of education. Awarded originally to religious bodies, they were necessarily given to the School Boards set up under the Elementary Education Act, 1870. Through the extension of these grants and the powers of control which they implied, as well as through the other powers given to the central authority, the Education Department, and (since 1902) the Board of Education, has been able to make itself a member of a strong and effective partnership with the education authorities. Nowhere is the collaboration between local and central government so close and (in spite of some serious differences) so cordial as in the sphere of education. We have seen

<sup>1</sup> See *Errington v. Minister of Health*, [1934] 51 T.L.R. 44.

already how a grant system enabled the Home Office to secure some measure of control over the police. Later on the Ministry of Transport could make some attempt to co-ordinate the working of highway authorities for the same reason.

In the sphere of health administration, however, the grant system was but slowly applied. Grants were given at the end of last century in place of the taxes transferred to the county councils in 1889. But only in respect of specialized services were grants given for public health. These services were new services, created during the past twenty-five years for special purposes outside the framework of the older public health services—mental deficiency, tuberculosis treatment, the treatment of venereal disease, the care of the blind, and maternity and child welfare. In addition, grants have been given for housing since the war. The amount of the grant depended on the amount of the expenditure. It was therefore necessary for the Ministry of Health, in the interest of the Treasury, to supervise closely the estimates and the actual expenditure on the grant-aided services. Here there was a closer and more meticulous control than in any other sphere of local government.

In 1930 the special public health grants, as well as some of the road grants and the older grants mentioned above, were abolished under the Local Government Act, 1929. Together they amounted to something less than 16,000,000 pounds, and they were consolidated into the "block grants" payable under that Act not in accordance with expenditure, but in accordance with complicated statutory provisions which demanded no meticulous examination of estimates.\* But the sum to be paid by way of grants was now much swollen by the necessity for repaying to the local authorities by way of compensation for the loss of rateable value due to "derating." The sum to be distributed was now not 16,000,000 pounds but, to take a round figure, 45,000,000 pounds.<sup>69</sup>

Could Parliament permit the distribution of this large sum without any control over its expenditure? The answer was given in the negative. Accordingly, the Act of 1929 authorized the Minister of Health to reduce the grant to any authority if he was satisfied that it had "failed

\*[The Local Government Bill, introduced in October, 1947, provides for "equalization grants" to be paid to local authorities in place of block grants. The block grant formula of the Act of 1929 will be replaced by the new national minimum rating standard. Ed.]

<sup>69</sup>For the actual figures, see *Annual Report of the Minister of Health*, 1933-34, pp. 320-21.

to achieve or maintain a reasonable standard of efficiency and progress" in its public health functions, or that its expenditure had been "excessive and unreasonable," or if the Minister of Transport was satisfied that it had failed to maintain its roads in a satisfactory condition.

This is a "big stick" provision of such extreme strength that it cannot be used in any except the most unusual cases. But it established the principle that the Minister of Health was responsible for the efficiency and progress of the public health services and for the general nature of the local authorities' expenditure. Its immediate result in the former respect was to enable the Minister to conduct a survey of all the public health services—a survey which, though not yet completed, has produced some interesting and valuable results.<sup>16</sup> In the latter respect it has so far been unproductive of results. But it is conceivable that, if the deflationary policy of the Government in 1931-34 had not been accepted by the local authorities, the "big stick" might, in the phrase of James I, have "plied upon the poor boy's buttocks."

Even more important is the right and duty of the Minister to control all borrowing by local authorities. His powers in this respect apply to all loans, even if raised for educational or highway purposes. In spite of a growing tendency for local authorities to finance small capital works out of income, it is still true to say that all important capital works—that is, all new services and all large extensions of existing services—are financed out of loans. In considering whether to sanction a loan, the Minister considers not only the details of the proposed works, but also whether the financial position of the authority is sound and whether there is not some other work of more immediate importance.<sup>17</sup> Moreover, he considers the general financial situation of the country. Thus when in 1931 the National Government decided on a general policy of deflation, the Ministers at once put stringent limitations upon local borrowing. Unless the works were urgently needed, he refused to sanction any loan. In this respect, he completely reversed the policy of his predecessor. For under the Labour Government schemes of development were not only welcomed, they were demanded; and indeed bribes were given, by means of special grants under temporary legislation, to induce the authorities to submit schemes which would provide work for the unemployed.

<sup>16</sup> See *Annual Report of the Ministry of Health, 1933-34*, p. 96 et seq.

<sup>17</sup> See Royal Commission on Local Government, *Minutes of Evidence*, i, p. 57.

## VII

The control of the Board of Education has an entirely different origin, though in the result the methods used are not very different from those of the Ministry of Health. The chief differences lie in the fact that central functions in respect of education are older than the education duties of local authorities. Education was originally a voluntary or charitable service, provided by what are now classed as voluntary services. So far as it was charitable in the legal sense it became subject in the nineteenth century to the Charity Commissioners, whose powers in this respect were transferred to the Board of Education in 1902.<sup>22</sup> But these powers are of comparatively small importance, and relate only to endowments. They do not cover the ordinary expenditure of voluntary associations in the provision and maintenance of schools. The main powers of the Board are a consequence of the grant system.

Annual grants for the building of schools were first made in 1833; and in 1839 a Committee of the Privy Council was set up to superintend their allocation. Thus the Central Government became "a partner in the work of providing educational opportunities for the children of the poor,"<sup>23</sup> though many years elapsed before the local authorities were admitted into the partnership. The Committee of the Council asserted from the beginning that the power to make grants implied a power of inspection, and in spite of much opposition from the Church a system was established. It is to be noted, however, that from the beginning the Committee insisted that inspection involved not *control* but *assistance*. The success of the "control" of education is largely due to this idea of the relations between the Government and the providers of education, and the lack of success of "control" in the field of public health has been due in no small measure to the Benthamite ideas which the Local Government Board and the Ministry of Health inherited from the Poor Law. Control creates opposition; assistance is welcomed.

The original grant was for 20,000 pounds. Its scope was limited to assisting the building of schools. Successive reforms, notably in 1846 and 1861, increased the amount and the scope of the assistance. In 1856 the office of Vice-President of the Committee of Council on Education was permanently established by statute. There was now a

<sup>22</sup> Board of Education (Powers) O. in C., 1902, issued under the Board of Education Act, 1899.

<sup>23</sup> Frank Smith, *History of Elementary Education*, p. 137.



Minister for Education (acting, however, under the general authority of the Lord President of the Council) administering grants according to a "code" of regulations which provided for inspection with a view to efficiency. In 1859 public expenditure on education amounted to 836,920 pounds. All the steps in the development of a complete education system had, however, been hindered by political disputes. In 1858 a Royal Commission, known as the Newcastle Commission, was set up. It reported in 1861, and recommended among other things the creation of county and borough boards of education. This recommendation was so hotly opposed that it was not accepted, but a revised code was issued in the same year. It provided for capitation grants: but "the building must satisfy the inspector, the teacher must be certificated, proper registers must be kept, and needlework must be taught to girls. The grant could be reduced for faults of instruction or discipline, for failure to remedy defects or supply adequate apparatus, for insufficiency of staff, and was not to exceed the amount of school fees and subscriptions, or 15s. per scholar in average attendance. Most important of all, one-third of the sum claimable on attendance was to be forfeited for failure in each of the three subjects, reading, writing, and arithmetic." "

This grant system remained substantially unaltered until 1897. In the meantime, the Elementary Education Act, 1870, had provided for the setting up of School Boards, and had thus brought education into the field of local government; and the Elementary Education Act, 1876, had made elementary education compulsory. Under the Act of 1870, the Education Department had the duty of setting up School Boards where they were necessary; it had powers to unite school districts, it had powers for superseding defaulting School Boards; it could conduct inspections and demand returns; it had miscellaneous powers of sanctioning actions of education authorities; and above all, it continued to be the authority administering Parliamentary grants according to the principles of the code for the time being in force.

Between 1870 and 1902 there were some twenty Education Acts. The scope of "education" was gradually extended and the cost of providing the service increased accordingly. By the Board of Education Act, 1899, the functions of the Education Department of the Privy Council were transferred to a "Board of Education." It is a "Board" only in theory, for it never meets: and in effect it is an ordinary Government Department with a Minister, called the Presi-

" Frank Smith, *op. cit.*, pp. 255-56.

dent of the Board, at its head. Powers were taken to transfer some of the functions of the Charity Commissioners, and they were exercised in 1902. But in other respects the Act did not change the existing situation. The Board's powers were dependent essentially on the grant system which the Privy Council had gradually built up. It continued the tradition of the Education Department. Though its powers increased as the functions of education authorities increased, the essential basis of the central control of education remained unaltered. Nor did the abolition of the School Board in 1902 and the transfer of their functions to the councils of counties and boroughs make any essential difference.

The powers are wide and elastic. They have been exercised, too, in an able manner. In recent years the Board has made great use of advisory committees, especially the Hadow Committee, whose three reports promise to revolutionize educational administration. Already a great reorganization is in progress, in accordance with the *Report on the Adolescent*.

### VIII

We must now go back to the public health services because another Department, the Ministry of Transport, has taken over some of the functions of the Local Government Board. It was part of the policy of the Royal Sanitary Commission that public health and highways administration should be co-ordinated. The relationship is obvious. Public health, in its administrative sense, is primarily concerned with urban developments. Many of what the highways department calls "roads" are what the public health department calls "streets." Urbanization involves the making and extension of roads and the increase of traffic on older roads. So long as the roads were used primarily by the inhabitants of the neighbourhood, it was obvious that the public health authority must be responsible for them. There was, of course, always a substantial through traffic on what we may refer to (though it is no longer an official designation) as "main roads." Many of these were old turnpike roads. But the creation of the railway system reduced their importance, and it was enough to provide, when the county councils were established, that main roads should be under their control.

With the invention of the internal combustion engine, however, conditions were fundamentally altered. The main roads became part of the national transport system, almost as much dissociated from local influences as the railways. It was natural, therefore, that the

Central Government should be called upon to exercise more and more control over the actions of highway authorities. The first steps in the new development were taken under the Development and Road Improvement Act, 1909, under which a Road Board was established to make advances to highway authorities in respect of the construction of new roads or the improvement of existing roads. It is significant, too, that the Act gave the Road Board itself power to construct and maintain new roads, though this power has been rarely exercised. The funds available for the purposes of the Act were, under the Finance (1909-10) Act, 1910, equal to the net proceeds of the duties on motor spirit and the net proceeds of the duties licences for motor cars.

The great development of road transport not only increased the funds available to the road development fund and placed a heavy burden on local authorities. It also created a new national industry which competed with the railways and had as little connection with local conditions as the railways. A technical Road Board merely concerned with roads was therefore not sufficient. What was required was a new department of State concerned with the transport as a whole. Accordingly, a Ministry of Transport was established in 1919 to exercise all the powers and duties of Government departments in relation to railways; light railways, tramways, canals, waterways, and inland navigation; roads, bridges, and ferries, and vehicles and traffic thereon; and harbours, docks, and piers.

The new Ministry was not concerned primarily with highways, but with the transport system which used the highways. Just as the Road Board had been given power to make and maintain roads, so the Ministry was given power to establish and work transport services. Authority was also given to classify the roads for the purpose of making advances for their construction, improvement, or maintenance.

In 1920 new licences were provided for mechanically propelled vehicles, used on public roads, and subject to certain deductions, the produce of the new taxes was ordered to be paid into the Road Fund, which took the place of the road development fund. Successive Chancellors "raided" the ample and increasing revenues thus made available. Also, some of the road grants were abolished by the Local Government Act, 1929. Nevertheless, the Minister of Transport has had substantial funds at his disposal for assisting road developments. Thus the highway service has become heavily grant-aided; and the control exercised by the Ministry of Transport has increased correspondingly. The "big stick" provision of the Act of 1929 retained a

control of the Minister even where the road grants were abolished.

More recent developments have, moreover, tended to increase the authority of the Ministry of Transport and correspondingly diminished the importance of local authorities. The problem created by the development of road transport was first to provide roads; then it became a problem of regulating a new industry competing with the railways; and now it has become a problem of regulating road traffic and maintaining the safety of the population. The Road Traffic Acts of 1930 and 1934, the London Traffic of 1924, and the Road and Rail Traffic Act, 1933, are far more than local government statutes. The problem of the roads is now but one aspect of a complicated industrial problem. The relative importance of the highway authorities has consequently been reduced at the same time as the control of the Ministry of Transport over those authorities has increased.

## IX

The result of all these methods of control is to make the Central Government an essential factor in what is still called "local government." Foreign commentators on our system continue to speak of England as a country of "local self-government." It is clear that it is nothing of the kind. It is true that we have elected local authorities exercising a discretion according to the opinions which meet the approval of their own electorate. It is true also that they can do a great deal, within their powers, to improve the health and happiness of their constituents. But they are rigidly restricted to the powers conferred upon them by Parliament; their organization and their proceedings are determined by statutes (there is no such thing as "home rule" in the American sense), and above all they are controlled more or less closely in all their activities by organs of the Central Government.

It is no uncommon event to find councillors complaining that they do not do as their electors wish, but as they are ordered by "Whitehall." This is, of course, a travesty of the facts. The complaint is most frequently made by representatives of Ratepayers' Associations and other persons who represent the landlord interest. Their policy is the simple one of reducing costs. They never explain how they are to reduce costs nor are their efforts when in office successful in doing so. But they are able to put forward a *non possumus* when Government departments suggest developments. They are especially critical of the Board of Education and the Board of Control. The

benefits obtained from better education and from segregation of the mentally deficient are not immediately obvious. These services involve a long-term policy. The Board of Education insists on a high standard of building design because its medical officers believe that the benefits to be obtained in the health and the intellectual development of the children will prove ultimately to be worth the cost. The Board of Control insists on a high percentage of segregation because it believes that this will reduce the proportion of mental defectives in the next generation and will prevent sexual and other "crimes" of abnormality in this. The latter Board also insists on a high standard of equipment because it considers that if a mental patient is to be maintained he should be given as full a life as his intellectual standard permits. He should, it is thought, be given such tuition as will enable him to amuse himself, even if he can never become self-supporting.

It must be admitted that the Board of Control meets more opposition than the other central bodies concerned with local government. Many think that the standards which it lays down are too high—recently, indeed, it has relaxed them. In any case, the mental deficiency service is not "popular" among councillors. It is difficult to arouse enthusiasm for a service which is so expensive and which produces so little in the way of obvious results. Yet this unpopularity is not due to the Board's coercive powers. They are by no means so great as those of the other central authorities. It is due to the fundamental difficulty of securing co-operation between an enthusiastic central authority and reluctant local authorities. It is not an unimportant factor, too, that the Board is regarded as a technical body, so that it is not directly and consistently controlled politically.

The Board of Education has very large and very effective coercive powers. It has been, on the whole, fortunate in its political heads. It has been fortunate, too, in its officials. It has a breadth of view which perhaps no other office has attained. Moreover, education is a popular local service except among "anti-expenditure" councillors. On almost every education authority, even on most of the county councils, there are to be found at least a few councillors who are willing to work hard in the cause of education, and who therefore form the backbone of the education committees. For all these reasons the Board of Education has been able, generally speaking, to work in co-operation with the local authorities. It has not been as critical of experimentation as the Ministry of Health. It has been able to drag along the more reactionary authorities without too much fuss.

The experience of the Ministry of Transport has been even happier. For one thing, it has had large funds at its disposal, in spite of the "raiding" of the Road Fund by successive Chancellors of the Exchequer. Also, it has had active Ministers anxious for Cabinet office, and being usually out of the Cabinet able to spend time in forwarding their political careers by taking a real interest in their work. The Department has given them substantial aid by maintaining excellent relations with the Press (it is worthy of note that no Minister of Transport has been a failure in his office). Local authorities have been anxious for road developments, partly because they relieved them of some of the burden of unemployment, and partly because, especially in the counties, councillors are usually motorists. Here again, therefore, there has been effective co-operation.

The experience of the Ministry of Health has been more mixed. Its Ministers have varied. Its chief medical officers have been good, but many of the other chief officials have belonged too much to the "old school" of the civil service to take effective control of rapidly developing services. It has shown few powers of invention in dealing with such problems as housing and town planning. In the sphere of public health it has lagged far behind the more progressive local authorities. It inherited an ancient penal tradition in the Poor Law, and it has taken a long time to give it up.

Above all, the powers of the Ministry of Health have been too casual and heterogeneous. It has involved itself in too much detail in some services. In others it has had too little powers of control. The Local Government Act of 1929 has considerably altered the legal position, and gradually, as the old traditions die away, a less rigid and more general system of co-operation may take the place of the older system. Moreover, the Ministry has been hindered by rapid changes of governmental policy. This is noticeable especially in the field of housing. Not having many ideas of their own, the permanent officials have not been able to keep a reasonably consistent policy. They have at one time harried local authorities to build more houses; at another time they have tried to damp their enthusiasm. Sometimes they have thought in terms of houses, sometimes in terms of slums, sometimes in terms of over-crowding.

All the central authorities, without exception, have been hindered by fluctuations in general policy. There was a great spurt in the post-war years which was stopped by the "Geddes Axe." The return of optimism, made most obvious politically by the growing strength

of the Labour Party, but invigorating the policies of all parties, was brought to an abrupt end by the events of 1931. Since then there has been a gradual change of policy without any formal announcement. This fluctuation has led the enthusiasts to suggest the creation of independent boards and commissions, either to take over or to supervise separate local services. That policy produced the Central Electricity Board, the London Passenger Transport Board, and the Unemployment Assistance Board. There have been suggestions for a National Housing Board and a National Town Planning Commission. The assumption is that services can be divorced from "politics" and that a national uncontrolled board can establish and carry out a consistent policy without reference to changing political ideas. The success of the Central Electricity Board is a matter of dispute. The London Passenger Transport Board has yet to prove its utility. The Unemployment Assistance Board has hardly entered upon its functions. In any case, the Central Electricity Board and the London Passenger Transport Board are not, as precedents, on all fours with recent proposals. They have been charged with the carrying out of technical services which are non-political in the sense that their services have not been the subject of political disputes. The provision of assistance to the unemployed and of houses for the working classes are not services which can be divorced from politics; they relate to the essential bases of political controversy. No technical device will exclude them from Parliamentary debate. Responsibility to Parliament is necessary because Parliament, or at least a section of it, wants, and will continue to want, to criticize their administration. The Poor Law Commissioners long ago proved that a department which cannot defend itself is doomed.

Indeed, there is a more fundamental objection. The social services cannot be split up and handed over in sections to the enthusiasts. Each of the services impinges upon and influences the others. It is impossible to give each service to a separate authority which takes no thought for the activities of its neighbours. Health, housing, town planning, unemployment assistance, education, lunacy and mental deficiency, and even traffic (for traffic implies streets, streets imply houses, and houses affect health) are cognate services. What is wanted is not disintegration but closer integration. The Ministries of Labour, Health and Transport, and the Board of Education, tend already to follow divergent policies. It is essential to co-ordinate their activities, and anything which tends to separate them still more will be disastrous.

to an effective and economic administration. Perhaps the time is not far distant when a single Minister for the Social Services will control, through Parliamentary Secretaries, all the services of local government except, possibly, highways and agriculture. "Central control" must then involve, not a meticulous investigation of the details of local administration, but a general control in the national interest of divergent or contradictory local policies.



## Select Bibliography

THIS bibliography is not comprehensive, but is intended as a guide to some of the most useful books on British government, in addition to those from which material has here been reprinted. With minor modifications, the reading list follows the order in which the subject matter in this volume has been arranged.

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